



Community Councils Administrative Functions

Department of
Regulatory and Economic Resources
2014

COMMUNITY COUNCIL MEMBER HANDBOOK

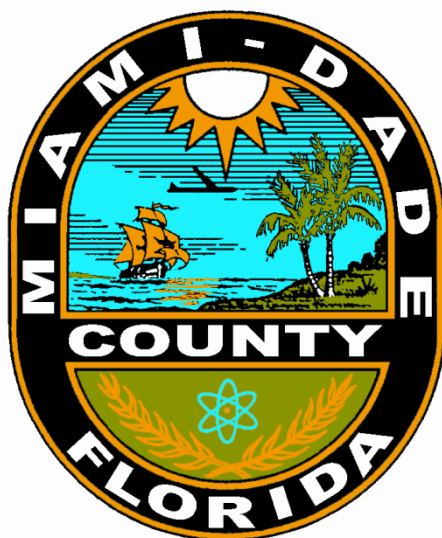


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THE HOME RULE AMENDMENT **AND CHARTER**

(AS AMENDED THROUGH NOVEMBER 2, 2010)
MIAMI-DADE COUNTY FLORIDA

The Miami-Dade County Home Rule Amendment to the Florida State Constitution was adopted November 6, 1956.

The Miami-Dade County Home Rule Charter was adopted May 21, 1957.

(1) The electors of Miami-Dade County, Florida, are granted power to adopt, revise, and amend from time to time a home rule charter of government for Miami-Dade County, Florida, under which the Board of County Commissioners of Miami-Dade County shall be the governing body. This charter:

(a) Shall fix the boundaries of each county commission district, provide a method for changing them from time to time, and fix the number, terms and compensation of the commissioners, and their method of election.

(b) May grant full power and authority to the Board of County Commissioners of Miami-Dade County to pass ordinances relating to the affairs, property and government of Miami-Dade County and provide suitable penalties for the violation thereof; to levy and collect such taxes as may be authorized by general law and no other taxes, and do everything necessary to carry on a central metropolitan government in Miami-Dade County.

(c) May change the boundaries of, merge, consolidate, and abolish and may provide a method for changing the boundaries of, merging, consolidating and abolishing from time to time all municipal corporations, county or district governments, special taxing districts, authorities, boards, or other governmental units whose jurisdiction lies wholly within Miami-Dade County, whether such governmental units are created by the Constitution or the Legislature or otherwise, except the Miami-Dade County Board of County Commissioners as it may be provided for from time to time by this home rule charter and the Board of Public Instruction of Miami-Dade County.

(d) May provide a method by which any and all of the functions or powers of any municipal corporation or other governmental unit in Miami-Dade County may be transferred to the Board of County Commissioners of Miami-Dade County.

(e) May provide a method for establishing new municipal corporations, special taxing districts, and other governmental units in Miami-Dade County from time to time and provide for their government and prescribe their jurisdiction and powers.

(f) May abolish and may provide a method for abolishing from time to time all offices provided for by Article VIII, Section 6, of the Constitution or by the Legislature, except the Superintendent of Public Instruction and may provide for the consolidation and transfer of the functions of such offices, provided, however, that there shall be no power to abolish or impair the jurisdiction of the Circuit Court or to abolish any other court provided for by this Constitution or by general law, or the judges or clerks thereof although such charter may create new courts and judges and clerks thereof with jurisdiction to try all offenses against ordinances passed by the Board of County Commissioners of Miami-Dade County and none of the other courts provided for by this Constitution or by general law shall have original jurisdiction to try such offenses, although the charter may confer appellate jurisdiction on such courts, and provided further that if said home rule charter shall abolish any county office or offices as authorized herein, that said charter shall contain adequate provision for the carrying on of all functions of

said office or offices as are now or may hereafter be prescribed by general law.

(g) Shall provide a method by which each municipal corporation in Miami-Dade County shall have the power to make, amend or repeal its own charter. Upon adoption of this home rule charter by the electors this method shall be exclusive and the Legislature shall have no power to amend or repeal the charter of any municipal corporation in Miami-Dade County.

(h) May change the name of Miami-Dade County.

(i) Shall provide a method for the recall of any commissioner and a method for initiative and referendum, including the initiation of and referendum on ordinances and the amendment or revision of the home rule charter, provided, however, that the power of the Governor and Senate relating to the suspension and removal of officers provided for in this Constitution shall not be impaired, but shall extend to all officers provided for in said home rule charter.

(2) Provision shall be made for the protection of the creditors of any governmental unit which is merged, consolidated, or abolished or whose boundaries are changed or functions or powers transferred.

(3) This home rule charter shall be prepared by a Metropolitan Charter Board created by the Legislature and shall be presented to the electors of Miami-Dade County for ratification or rejection in the manner provided by the Legislature. Until a home rule charter is adopted the Legislature may from time to time create additional Charter Boards to prepare charters to be presented to the electors of Miami-Dade County for ratification or rejection in the manner provided by the Legislature. Such charter, once adopted by the electors, may be amended only by the electors of Dade County and this charter shall provide a method for submitting future charter revisions and amendments to the electors of Miami-Dade County.

(4) The County Commission shall continue to receive its pro rata share of all revenues payable by the state from whatever source to the several counties and the State of Florida shall pay to the Commission all revenues which would have been paid to any municipality in Miami-Dade County

which may be abolished by or in the method provided by this home rule charter; provided, however, the Commission shall reimburse the comptroller of Florida for the expense incurred, if any, in the keeping of separate records to determine the amounts of money which would have been payable to any such municipality.

(5) Nothing in this section shall limit or restrict the power of the Legislature to enact general laws which shall relate to Miami-Dade County and any other one or more counties in the State of Florida or to any municipality in Miami-Dade County and any other one or more municipalities of the State of Florida, and the home rule charter provided for herein shall not conflict with any provision of this Constitution nor of any applicable general laws now applying to Miami-Dade County and any other one or more counties of the State of Florida except as expressly authorized in this section nor shall any ordinance enacted in pursuance to said home rule charter conflict with this Constitution or any such applicable general law except as expressly authorized herein, nor shall the charter of any municipality in Miami-Dade County conflict with this Constitution or any such applicable general law except as expressly authorized herein, provided however that said charter and said ordinances enacted in pursuance thereof may conflict with, modify or nullify any existing local, special or general law applicable only to Miami-Dade County.

(6) Nothing in this section shall be construed to limit or restrict the power of the Legislature to enact general laws which shall relate to Miami-Dade County and any other one or more

counties of the State of Florida or to any municipality in Miami-Dade County and any other one or more municipalities of the State of Florida relating to county or municipal affairs and all such general laws shall apply to Miami-Dade County and to all municipalities therein to the same extent as if this section had not been adopted and such general laws shall supersede any part or portion of the home rule charter provided for herein in conflict therewith and shall supersede any provision of any ordinance enacted pursuant to said charter and in conflict therewith, and shall supersede any provision of any charter of any municipality in Miami-Dade County in conflict therewith.

(7) Nothing in this section shall be construed to limit or restrict the power and jurisdiction of the Railroad and Public Utilities Commission or of any other state agency, bureau or commission now or hereafter provided for in this Constitution or by general law and said state agencies, bureaus and commissions shall have the same powers in Miami-Dade County as shall be conferred upon them in regard to other counties.

(8) If any section, subsection, sentence, clause or provision of this section is held invalid as violative of the provisions of Section 1, Article XVII of this Constitution the remainder of this section shall not be affected by such invalidity.

(9) It is declared to be the intent of the Legislature and of the electors of the State of Florida to provide by this section home rule for the people of Miami-Dade County in local affairs and this section shall be liberally construed to carry out such purpose, and it is further declared to be the intent

of the Legislature and of the electors of the State of Florida that the provisions of this Constitution and general laws which shall relate to Miami-Dade County and any other one or more counties of the State of Florida or to any municipality in Miami-Dade County and any other one or more municipalities of the State of Florida enacted pursuant thereto by the Legislature shall be the supreme law in Miami-Dade County, Florida, except as expressly provided herein and this section shall be strictly construed to maintain such supremacy of this Constitution and of the Legislature in the enactment of general laws pursuant to this Constitution.

MIAMI-DADE COUNTY **HOME RULE CHARTER** **PREAMBLE**

We, the people of this County, in order to secure for ourselves the benefits and responsibilities of home rule, to create a metropolitan government to serve our present and future needs, and to endow our municipalities with the rights of self determination in their local affairs, do under God adopt this home rule Charter.

CITIZENS' BILL OF RIGHTS

(A). This government has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administrative management, to make government more accountable, and to insure to all persons fair and equitable treatment, the following rights are guaranteed:

1. *Convenient Access*. Every person has the right to transact business with the County and the municipalities with a minimum of personal inconvenience. It shall be the duty of the Mayor,

the County Manager, and the Commission to provide, within the County's budget limitations, reasonably convenient times and places for registration and voting, for required inspections, and for transacting business with the County.

2. *Truth in Government.* No County or municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.

3. *Public Records.* All audits, reports, minutes, documents and other public records of the County and the municipalities and their boards, agencies, departments and authorities shall be open for inspection at reasonable times and places convenient to the public.

4. *Minutes and Ordinance Register.* The Clerk of the Commission and of each municipal council shall maintain and make available for public inspection an ordinance register separate from the minutes showing the votes of each member on all ordinances and resolutions listed by descriptive title. Written minutes of all meetings and the ordinance register shall be available for public inspection not later than 30 days after the conclusion of the meeting.

5. *Right to be Heard.* So far as the orderly conduct of public business permits, any interested person has the right to appear before the Commission or any municipal council or any County or municipal agency, board or department for the presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the governmental entity involved; provided, nothing herein shall prohibit the Commission or any municipal council from referring a matter to a committee of each of their respective bodies to conduct a public hearing, unless prohibited by law. Matters shall be scheduled for the convenience of the public, and the agenda shall be divided into approximate time periods so that the public may know approximately when a matter will be heard. Nothing herein shall prohibit any governmental entity or agency from imposing reasonable time limits for the presentation of a matter.

6. *Right to Notice.* Persons entitled to notice of a County or municipal hearing shall be timely informed as to the time, place and nature of the hearing and the legal authority pursuant to which the hearing is to be held. Failure by an individual to receive such notice shall not constitute mandatory grounds for canceling the hearing or rendering invalid any determination made at such hearing. Copies of proposed ordinances or resolutions shall be made available at a reasonable time prior to the hearing, unless the matter involves an emergency ordinance or resolution.

7. *No Unreasonable Postponements.* No matter once having been placed on a formal agenda by the County or any municipality shall be postponed to another day except for good cause shown in the opinion of the County Commission, the municipal council or other governmental entity or agency conducting such meeting, and then only on condition that any person so requesting is mailed adequate notice of the new date of any postponed meeting. Failure by an individual to receive such notice shall not constitute mandatory grounds for canceling the hearing or rendering invalid any determination made at such hearing.

8. *Right to Public Hearing.* Upon a timely request of any interested party a public hearing shall be held by any County or municipal agency, board, department or authority upon any significant policy decision to be issued by it which is not subject to subsequent administrative or legislative review and hearing. This provision shall not apply to the Law Department of the County or of any municipality, nor to anybody whose duties and responsibilities are solely advisory.

At any zoning or other hearing in which review is exclusively by certiorari, a party or his counsel shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The decision of any such agency, board, department or authority must be based upon the facts in the record. Procedural rules establishing reasonable time and other limitations may be promulgated and amended from time to time.

9. *Notice of Actions and Reasons.* Prompt notice shall be given of the denial in whole or in part of a request of an interested person made in connection with any County or municipal

administrative decision or proceeding when the decision is reserved at the conclusion of the hearing. The notice shall be accompanied by a statement of the grounds for denial.

10. *Managers' and Attorneys' Reports.* The County Manager and County Attorney and each City Manager and City Attorney shall periodically make a public status report on all major matters pending or concluded within their respective jurisdictions.

11. *Budgeting.* In addition to any budget required by state statute, the County Manager shall prepare a budget showing the cost of each program for each budget year. Prior to the County Commission's first public hearing on the proposed budget required by state law, the County Manager shall make public a budget summary setting forth the proposed cost of each individual program and reflecting all major proposed increases and decreases in funds and personnel for each program, the purposes therefore, the estimated millage cost of each program and the amount of any contingency and carryover funds for each program.

12. *Quarterly Budget Comparisons.* The County Manager shall make public a quarterly report showing the actual expenditures during the quarter just ended against one quarter of the proposed annual expenditures set forth in the budget. Such report shall also reflect the same cumulative information for whatever portion of the fiscal year that has elapsed.

13. *Adequate Audits.* An annual audit of the County and each municipality shall be made by an independent certified public accounting firm in accordance with generally accepted auditing standards. A summary of the results, including any deficiencies found, shall be made public. In making such audit, proprietary functions shall be audited separately and adequate depreciation on proprietary facilities shall be accrued so the public may determine the amount of any direct or indirect subsidy.

14. *Regional Offices.* Regional offices of the County's administrative services shall be maintained at locations in the County for the convenience of the residents.

15. *Financial Disclosure.* The Commission shall by ordinance make provision for the filing under oath or affirmation by all County and municipal elective officials, candidates for County and municipal elective offices, such employees as may be designated by ordinance, and such other public officials, and outside consultants who receive funds from the County or municipalities, within the County and who may legally be included, of personal financial statements, copies of personal Federal income tax returns, or itemized source of income statements. Provision shall be made for preparing and keeping such reports current from time to time, and for public disclosure.

The Commission shall also make provision for the filing annually under oath of a report by full-time County and municipal employees of all outside employment and amounts received therefrom. The Mayor, the County Manager, and any City Manager may require monthly reports from individual employees or groups of employees for good cause.

16. *Representation of Public.* The Commission shall endeavor to provide representation at all proceedings significantly affecting the County and its residents before State and Federal regulatory bodies.

17. *Commission on Ethics and Public Trust.* The County shall, by ordinance, establish an independent Commission on Ethics and Public Trust comprised of five members, not appointed by the County Commission, with the authority to review, interpret, render advisory opinions and enforce the county and municipal code of ethics ordinances, conflict of interest ordinances, lobbyist registration and reporting ordinances, ethical campaign practices ordinances, when enacted, and citizens' bill of rights.

(B). The foregoing enumeration of citizens' rights vests large and pervasive powers in the citizenry of Miami-Dade County. Such power necessarily carries with it responsibility of equal magnitude for the successful operation of government in the County. The orderly, efficient and fair operation of government requires the intelligent participation of individual citizens exercising their rights with dignity and restraint so as to avoid any sweeping acceleration in the cost of

government because of the exercise of individual prerogatives, and for individual citizens to grant respect for the dignity of public office.

(C). Remedies for Violations. In any suit by a citizen alleging a violation of this Article filed in the Miami-Dade County Circuit Court pursuant to its general equity jurisdiction, the plaintiff, if successful, shall be entitled to recover costs as fixed by the Court. Any public official or employee who is found by the Court to have willfully violated this Article shall forthwith forfeit his office or employment.

(D). Construction. All provisions of this Article shall be construed to be supplementary to and not in conflict with the general laws of Florida. If any part of this Article shall be declared invalid, it shall not affect the validity of the remaining provisions.

COMMUNITY COUNCILS

COMMUNITY COUNCILS FACTS

- On September 04, 1996, the Board of County Commissioners (BCC) adopted Ordinances No. 96-126 and No. 96-127 establishing a community council system in Miami-Dade County.
- The adopted language of Ordinances of 96-126 and 96-127 can now be found in Sections 20-40 through 20-45 and 33-306 through 33-313 of the County Code.
- Section 20-41 provides that community councils have the duties and responsibilities of Community Zoning Appeals Board (CZAB) as set forth in Section 33-306 of the Code.
- Section 33-306 provides that the Community Zoning Appeals Boards shall have jurisdiction over zoning applications as provided in Chapter 33 of the County Code.
- Section 20-41 also provides that community councils have the option of performing planning, budgeting and communication functions.

Frequently Asked Questions (FAQs)

What are Miami-Dade County Community Councils?

The Board of County Commissioners (BCC) created Community Councils in 1996. Each council serves one of ten geographic areas in unincorporated Miami-Dade County and is comprised of six members elected by the community and one appointed by the BCC. All members must be registered voters and reside in the area that they represent.

Councils usually meet once a month to discuss zoning matters and all meetings are advertised in a newspaper of general circulation at least seven (7) days in advance. In addition, the meetings are listed in the Miami-Dade County Calendar.

Where do you call to acquire information on Community Councils?

For Non-Zoning Issues or to obtain general information regarding community councils, please contact the Department of Regulatory and Economic Resources - Agenda Coordinator's Office, Non-Zoning Section at 305-375-1244. Questions pertaining to zoning and land use issues should be directed to the Department of Regulatory and Economic Resources – Zoning Hearings Section at 305-375-2640 or visit <http://www.miamidade.gov/zoning/hearings.asp>

Why were Community Councils created?

Community Councils were primarily created to make zoning and land use decisions in a setting more accessible to the community. Community Councils also serve as advisory liaisons from their communities to the Board of County Commissioners and County staff, relaying relevant information and recommendations on selected concerns of the council area. Community Councils make recommendations to the County Commission on capital, programming and operational priorities for municipal services such as police, parks, fire and roadway maintenance in their area as well as relaying other concerns and needs of local residents.

How are Community Council members selected?

The Board of County Commissioners designed the membership of each Community Council to consist of six members elected by local unincorporated area residents and one member appointed by the County Commission. The elected members must be registered voters in Miami-Dade County residing in the Community Council area they serve.

What decisions do Community Councils make?

Community Councils, sitting as Community Zoning Appeals Boards (CZABs), make virtually all zoning decisions in unincorporated Miami-Dade County. Community Councils decide, for example, whether to allow a new residential development, a shopping center, a church, or requests to vary technical specifications for zoning uses such as the required number of parking spaces or building setback distance.

In the Non-Zoning Meetings, Community Councils also may make recommendations about their areas to the Miami-Dade Board of County Commissioners on long-term, future land use plans and on Miami-Dade County public facilities such as parks, police stations, and libraries. They may also make recommendations on local municipal type services and on the unincorporated area budget.

COMMUNITY COUNCILS RESPONSIBILITIES (Code of Miami-Dade County)

- 1) Zoning (required)
 - a) Make local zoning decisions with respect to:
 - Appeals of staff administrative decisions**
 - Special exceptions, unusual uses and new uses*
 - Variances from subdivision regulations*
 - Change-of-prefix use variances**
 - Zoning district boundary changes**
 - Site plan approvals in conjunction with above activities (County Commission

- remains responsible for changes to zoning regulations)
 - Alternative site development option*
 - Modifications or elimination of conditions and/or covenants*
- b) Make recommendations to the Board of County Commissioners on regional zoning decisions (Developments of Regional Impact)**
- 2) Planning (optional)
 - a) Compile profiles of their respective community's social, physical and economic conditions to assist them in performing their duties.
 - b) Prepare an annual statement of community needs including development patterns and regulations, public facilities and services to assist the Council.
 - c) Make recommendations to the Planning Advisory Board and Board of County Commissioners on proposed Miami-Dade County Comprehensive Development Master Plan amendments that impact each Council's area.
 - d) Make recommendations to the County Commission on the location and siting of specific public facility and infrastructure projects.
- 3) Protection of Persons and Property Programming (optional)
 - a) Recommend policies to coordinate the Fire Rescue District and Police Department in the enhancement of public safety and protection of property in the Council area through improved communications and service needs assessments.
- 4) Budgeting (optional)
 - a) Make recommendations to the County Manager and County Commission on priorities for community facilities and services and on Community Based Organization grants for the Council area.
 - b) Make recommendations to the County manager and County Commission on revenue needs including unincorporated area property taxes mileages and special taxing districts.
- 5) Communication (optional)
 - a) Conduct forums on Council area issues to facilitate the exchange of information between residents, property owners, businesses, institutions, and County officials and administrators.
 - b) Disseminate information about Council area related organizations, programs, and activities.
 - c) Coordinate with Miami-Dade County's Department of Regulatory and Economic Resources in the exercise of that agency's responsibilities within the Council area.

* appealable to circuit court

**appealable to Board of County Commissioners who can override Community Council denial only by 2/3 vote of the members in office. Mayor can deny County Commission action on appeal which in turn can be overridden by 2/3 vote of County Commissioners in office.

***Board of County Commissioners can override Community Council recommendation for denial only by 2/3 vote of the members in office. Mayor can deny County Commission action which in turn can be overridden by 2/3 vote of County Commissioners in office.

ZONING HEARINGS

ZONING HEARINGS SECTION FUNCTION: The Zoning Hearings Section is responsible for processing Public Hearing applications, Administrative Variance applications, Entrance Features and Administrative Site Plan Reviews. Public Hearings Applications can only be submitted during the first 7 days of the month. Other applications may be submitted at any time during the month. All submittals are by appointment only.

Public hearing applications involve many different requests that affect the use of the subject property. Some requests involve Zone Changes, Unusual Uses, Use and Non-Use Variances and Special Exceptions. The Zoning hearing takes a minimum of 4 months to be processed and heard in a public forum by a Community Zoning Appeals Board (CZAB).

Administrative Variances involve only residential properties and are usually for variances from the setback or lot coverage requirements. In order for the applicants to file this type of application, they must obtain signatures from all abutting neighbors. There are also certain thresholds and specific requirements that must be met. These applications take approximately 6 weeks and are approved administratively followed by an appeal period.

The Zoning Hearings Section stores the public hearing files, the approved administrative variance files and the entrance feature files. All files are available to the public, upon request. This section also schedules the public hearing applications before any of the 10 Community Councils Zoning Appeals Boards (CZABs) or the Board of County Commissioners (BCC's). They also notify surrounding property owners of upcoming hearings.

The Zoning Hearings Section is comprised of Zoning Plans Processors, Zoning Hearings Specialists and Zoning Clerks who provide service to the public and attend the CZAB meetings in the evenings as support staff for the Board Members.

In order to obtain an application or make a pre-filing appointment with a zoning hearings processor or specialist, please call 305-375-2640.

ZONING HEARINGS

Frequently Asked Questions (FAQs)

WHO WOULD WANT A ZONING HEARING AND WHY? A request by application for a public zoning hearing normally comes about whenever a property owner or lessee desires to change the use of land or where development plans for a proposed use of land or a proposed structure are disapproved by the Zoning Processing Section, the Zoning Information Section or the Zoning Permit Section. These sections of the Department of Regulatory and Economic Resources determine whether or not present zoning regulations allow for certain uses or development proposals. A property owner or lessee, who desires to use or develop a property for a particular purpose which is not in compliance with zoning regulations, has the right to apply for a public hearing which will be scheduled before the Community Zoning Appeals Board (CZAB) or the board of County Commissioners.

WHERE CAN I OBTAIN AN APPLICATION FOR A ZONING HEARING? Application forms for a zoning hearing are available at the following location: Department of Regulatory and Economic Resources, Zoning Hearing Section 111 N.W. 1st Street, 11th Floor, Miami, FL 33128-1974; Phone: 305-375-2640 or visit <http://www.miamidade.gov/zoning/home.asp>.

WHAT DO I NEED TO KNOW IN ORDER TO FILE FOR A ZONING HEARING? An application for public hearing must be fully completed in accordance with the "Instructions for Filing Applications." This application includes the name, mailing address and telephone number of the property owner or tenant (with owner's description, property size, use intended, structures on the property and the type of hearing requested).

IN ADDITION TO A FILING FEE, WHAT ELSE DO I NEED TO SUBMIT TO FILE FOR A HEARING? Letter of Intent: The Letter of Intent should explain why the request is being made and why you feel it should be approved. The letter must be signed by the Applicant and must clearly explain the exact nature of the proposed use or operation applied for, together with any pertinent technical data which will clarify the intended use of the property.

Site Plan: The site plan must show property dimension, streets, and north reference point. If structures exist on the property or are proposed, all structure dimensions and setbacks, off-street parking spaces, etc. (existing or requested) must be shown. The site plan must contain a title block & a detailed legend of site use data. A blank form for this is available upon request from the Zoning Hearing Section. The site plan should also be accompanied by a survey of the property.

Floor Plan: The floor plan must show all existing conditions and/or all proposed changes or additions to the interior of the structure. Each room must be dimensioned and the use of each room should be indicated.

Elevation Plan: The elevation drawing must show the dimensions of the structure and must give the overall height of the building. If wall or roof signs are involved in the request, the existing or proposed signs must be added to the drawing.

Profiles and Topographical Plan: Profiles and Topographical Plans will be required if the hearing request involved excavations. The Plan should show all dimensions of the proposed excavation including all perimeter and slope data and must be sealed by a registered Florida engineer or surveyor.

WHO CAN I MEET WITH TO GET INFORMATION ON THE HEARING PROCESS? Applicants are encouraged to take advantage of our department's free-of charge pre-filing appointment with a Zoning Hearing Processor or Specialist who explains in detail the hearing process, review your application package, and your plans and advise you what your request should be to accomplish your land development. Or land use goal. Pre-filing appointments are very beneficial because only a completed hearing application will be accepted. To schedule an appointment, contact the Zoning Hearings Section at (305) 375-2640 between 8:00 a.m. and 5:00 p.m., Monday through Friday.

WHEN CAN I SUBMIT THE PUBLIC HEARING APPLICATION? Zoning hearing applications must be submitted during the first (7) calendar days of the month. An appointment is necessary except on the last day of the filing period, no appointment is required on the last day of the filing period, as applicants are seen on a first-come, first-served basis. If you must file on the last day, we encourage you to arrive early.

WHEN WILL MY HEARING BE SCHEDULED? When the application and attachments have been completed and filed with the Zoning Hearings Section, and once the fee is paid, the public hearing will be projected for the earliest possible date. This is generally four months later, unless revisions are submitted. Your hearing will be held at night at a local school or available county facility in the council area. You will be scheduled on an agenda with approximately 7 other applicants and will be heard in the order in which you filed.

HOW CAN I FIND OUT IF THE PLANNING AND ZONING AND OTHER COUNTY DEPARTMENTS WILL SUPPORT MY PROPOSAL? You are encouraged to contact the following department before you file for zoning hearing. These offices will review your proposals and give input into the recommendation:

The Department of Environmental Resources Management must clear your application for compliance with Chapter 24 before it can be scheduled on an agenda.

The Public Works Department will review your hearing the Concurrence, compliance. If your proposed development does not meet concurrence, it cannot be scheduled for a hearing.

The Zoning Evaluation Section of the Department of Regulatory and Economic Resources will compile comments from other departments and draft the recommendation from the Department Director. The recommendation will be available to you approximately one and one half (1½) weeks prior to the hearing. You may discuss your recommendation with the Zoning Evaluation Section prior to that time if you wish. If your recommendation is for denial, you may wish to submit revisions to the plans to the Zoning Evaluation Specialist to attempt to meet the concerns mentioned in the recommendation. A fee will be charged for plan revisions, so it is recommended that you meet with the Zoning Evaluator as early as possible in the process. Once the hearing advertisement has been sent to the newspaper, all changes on the plans must be within the scope of the ad. If additional variances or other requests result from your plan revision, the plan will not be accepted and you must request a deferral the night of the meeting in order to have your hearing re-advertised. The Zoning Hearing Specialist handling your hearing is available to guide you through this process.

The Planning Division of the Department of Regulatory and Economic Resources will provide comments for your hearing recommendations and should be contacted early in the process.

WHAT HAPPENS AT THE PUBLIC HEARING? You will be notified by letter when your hearing is scheduled. The night of the hearing, the chair will call the meeting to order, the general information and rules will be read into the record. When your item/s are called, you or your attorney (if you choose one) will come forward and address the board. If others have come to speak in favor or to object to your hearing request, they will be given an opportunity to address the board, as well. You may be asked questions or wish to respond to issues brought up by objectors. Once all substantial competent evidence has been considered, the board will vote on your item and either approve/ deny/ or approve it with modifications. Conditions will probably be imposed.

WHAT HAPPENS AFTER THE HEARING? After your public hearing, a Resolution is prepared. The Resolution is the official typed result of the hearing and specifics of what was requested by you and what was decided by the board. If approved, all conditions are spelled out in detail and must be met by you in order to begin using the property for what you requested. If you have any problems with the conditions imposed, you may wish to consider appealing the decision. If an Agreement or Covenant was proffered prior to the hearing, the Agreement must be recorded. If your hearing was due to illegal construction, you will have to obtain building permits for the construction and obtain final inspections and a Certificate of Use and Occupancy or Certificate of Completion to prove compliance. The same process is involved for proposed construction and you should contact the Building Department at 786-315-2000, for information on obtaining a Certificate of Use and & Occupancy or Certificate of Completion. You may contact the Zoning Permit Section at 786-315-2660.

WHAT HAPPENS IF I WANT TO APPEAL THE DECISION OF MY HEARING OR IF IT IS APPEALED BY SOMEONE ELSE? Certain Community Zoning Appeals Board decisions on items such as Zone Changes, certain Use Variances and Appeals of Administrative Decision are appealable to the Board of County Commissioners. To determine if an item is appealable to the Board of County Commissioners, check the posting notice on the bulletin board located at the front of the 11th floor of the Stephen P. Clark Center or call the Zoning Hearings Section at 305-375-2640. All other items may only be appealed to Circuit Court. If the file is appealable to the County Commission, the appeal period begins the Monday after the Community Zoning Appeals Board's hearing and last two weeks. For Circuit Court appeal periods, please call 305-375-1806.

If your item is appealable to the Board of County Commissioners, you or an aggrieved party may file the appeal with the Zoning Hearings Section along with the appropriate fee. A transcript of the hearing will be requested, once received, the item will be scheduled on the next available County Commission agenda. In most cases, your appeal will be heard within two months of filing.

WHAT IS AN ADMINISTRATIVE VARIANCE AND WHY WOULD I NEED ONE? An Administrative Variance is an administrative procedure in which a homeowner can request zoning approval to build into up to half the required setback distance. For example, if you wanted to build a carport in front of your house, but the required setback distance is 25 feet and your carport is going to take up part of that distance, you may apply for an Administrative Variance for Non-Use Variance of Setback Requirements as long as:

- 1) You don't use more than 12 ½ feet, half the required setback distance.
- 2) You must obtain signatures from all surrounding property owners.

Administrative Variances are only available to people who are or will be living in their homes and are also available for Non-Use Variances of Lot Coverage Requirements for limited increases, and other Non-Use Variances for single-family, duplex or townhouse residences only.

ZONING DISTRICTS

GU	Interim — Uses depend on character of neighborhood, otherwise EU-2 standards apply	PAD	Planned Area Development — 5 acres min. Mixed residential and convenience retail services. Density depends on Master Plan, neighborhood studies, and neighborhood development.
AU	Agricultural — Residential 5 Acres Gross	RU-5	Semi-Professional Offices & Apartments
EU-2	Estates 1 Family 5 Acres Gross	RU-5A	Semi-Professional Offices 10,000 sq. ft. net
EU-1C	Estates 1 Family 2½ Acres Gross	OPD	Office Park District — 3 Acres gross Office buildings & Laboratories for scientific & industrial research.
EU-1	Estates 1 Family 1 Acre Gross	TND	Traditional Neighborhood District 40 acres gross min. Mixed uses
EU-S	Estates Sub. 1 Family 25,000 Sq. ft. gross	BU-1	Business — Neighborhood
EU-M	Estates Mod. 1 Family 15,000 sq. ft. net	BU-1A	Business — Limited
RU-1	Single Family Residential 7,500 sq. ft. net	BU-2	Business — Special
RU-1Z	Single Family Zero Lot Line 4,500 sq. ft. net	BU-3	Business — Liberal (Wholesale) includes mechanical garage and used car lots
RU-1(M)(a)	Modified Single Family 5,000 sq. ft. net	IU-1	Industry — Light
RU-1(M)(b)	Modified Single Family 6,000 sq. ft. net	IU-2	Industry — Heavy
RU-2	Two Family Residential 7,500 sq. ft. net	IU-3	Industry — Unlimited
RU-TH	Townhouse — 8.5 Units / net acre	IU-C	Industry — Controlled
RU-3	Four Unit Apartment 7,500 sq. ft. net	DKUC	Downtown Kendall Urban Center District
RU-3M	Minimum Apt. House 12.9 units / net acre		
RU-3B	Bungalow Court 10,000 sq. ft. net		
RU-4L	Limited Apt. House 23 units / net acre		
RU-4M	Modified Apt. House 35.9 units / net acre		
RU-4	Apartments 50 units / net acre		
RU-4A	Apartments 50 units / net acre, Hotel / Motel 75 units / net acre		

For additional and latest zoning districts, please visit:
<http://www.miamidade.gov/zoning/districts.asp>

RULES OF CONDUCTS/PROCEDURES FOR COMMUNITY ZONING APPEALS BOARD (CZAB)

1. **MEETINGS:** The meetings of the Board shall be held at such place and at such time as may be designated by the Director of Miami-Dade County Department of Regulatory and Economic Resources. No meeting shall extend beyond the time permitted by the facility where the meeting is being held.
2. **INSPECTIONS:** Board members are welcome to visit the sites on an individual basis.
3. **AGENDA:** The agenda and kit for the meeting shall be prepared by the Miami-Dade County Department of Regulatory and Economic Resources and distributed to members prior to the meeting date. The kit shall contain professional staff recommendations and other pertinent information.
4. **PRESIDING OFFICER:** The Chairperson shall preserve strict order and decorum at all meetings of the Board. The Chairperson shall state every question coming before the Board and announce the decision of the Board on all matters coming before it. The Chairperson may vote on all questions coming before the Board for a decision. The chairperson may make a motion or second a motion but in doing so shall relinquish the chair.
5. **CALL TO ORDER:** The Chairperson shall take the chair at the hour appointed for the meeting and shall immediately call the Board to order. In the absence of the Chairperson, the Vice-Chairperson shall assume all the duties of the Chairperson. In the absence of the Chairperson and the Vice-Chairperson, the Secretary of the Board shall determine whether a quorum is present and shall call for election of a temporary chairperson. Upon the arrival of the Chairperson or Vice-Chairperson, the temporary chairperson shall relinquish the chair upon the conclusion of the business immediately before the Board.
6. **ROLL CALL:** Before proceeding with the business of the Board, the Secretary shall call the roll of the members in alphabetical order and the names of those present and absent shall be entered in the minutes.
7. **QUORUM:** Four (4) members of the Board shall constitute a quorum. No resolution or motion shall be adopted by the Board without the affirmative vote of three (3) of the members present and voting, except in those cases where a greater vote may be required by the Code of Miami-Dade County. The names of the members present and their action as such meeting shall be recorded by the Secretary. Should no quorum attend within 30 minutes after the hour appointed for the meeting of the Board, the Chairperson or the Vice-Chairperson, or in their absence, the Secretary, may adjourn the meeting to a date as determined by the Director. No meeting shall be conducted in the absence of a quorum. In 2013 the Board of County Commissioners adopted an Ordinance that provides an option to the applicant on applications which failed to be heard on two (2) consecutive zoning meetings by a CZAB due to no quorum. The Ordinance allows for *“Such jurisdiction by the County Commission shall be at the option of the applicant, and under these circumstances the cost of providing notice of an application before the County Commission shall be borne by the County”*.

8. DECORUM: Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Board, shall be barred from further audience before the Board by the presiding officer, unless permission to continue or again address the Board be granted by the majority vote of the Board members present. No clapping, applauding, heckling or verbal outbursts in support or opposition to a speaker or the speaker's remarks shall be permitted. No signs or placards shall be allowed in the meeting room. Persons exiting the meeting room shall do so quietly.

9. RULES OF DEBATE: When a motion is presented and seconded, it is under consideration and no other motion shall be received thereafter, except to adjourn, defer or amend until the question is decided. These orders shall have preference in the order in which they are made.

Every member desiring to speak for any purpose shall address the Chairperson and upon recognition shall confine discussion and comments to the question under debate, avoiding all personalities and indecorous language.

A member once recognized shall not be interrupted when speaking unless it is to call the member to order. If called to order, the member shall cease speaking until the question of order is determined by the Chairperson and, if in order, the member shall be permitted to proceed.

Any member may appeal to the Board from the decision of the Chairperson upon a question of order when, without debate, the Chairperson shall submit to the Board the question "Shall the decision of the Chair be sustained?" and the Board shall decide by a majority vote.

When a vote is taken by roll call, there shall be no discussion by any member prior to voting and the members shall either vote yes or no. Any member, upon voting, may give a brief statement to explain his or her vote. All members are subject to the Conflict of Interest and Code of Ethics Ordinance pursuant to Section 2-11 of the Code of Miami-Dade County.

10. VOTING: The vote upon every motion or resolution shall be either vote by voice, by a show of hands, at the discretion of the Chairperson, or at the discretion of the Chairperson, or at the request of any members, by roll call in progressive alphabetical order, except the Chairperson shall be the last member called. All resolutions shall become effective after action is taken by the Board when prepared and transmitted by the Secretary or the Secretary's designee, who shall attest that the same was duly adopted.

11. DECISIONS: At the conclusion of each individual hearing, the Board shall make its decision immediately after that hearing is concluded, except in the event of a tie vote or a loss of quorum, or unless the Board by majority vote defers the matter.

12. ORDER OF BUSINESS:

- a. Opening of the meeting by the Chairperson
- b. Roll Call
- c. Call for deferrals and withdrawals at the beginning of the meeting or when the particular zoning matter is being heard

- d. Presentations of applications
 - i. Department introduces application
 - ii. Director's Recommendations presented upon request
 - iii. Applicant's presentation
 - iv. Objector's presentations
 - v. Applicant's rebuttal
 - vi. Chairperson calls for a motion on the matter pending when chairperson feels there has been significant discussion
 - vii. Board votes and announces decision
- e. Adjournment

13. PRESENTATIONS: Each person addressing the Board shall give his or her name and address in an audible tone so that the same may be part of the record; all remarks shall be addressed to the Board as a group and not to any individual member. No person, Other than a Board Member or Staff Member and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the Board, without permission of the presiding officer. No question shall be asked unless the same is addressed through the presiding officer.

14. FAILURE TO APPEAR: If neither side is present, unless the Board defers, the application shall be considered on basis of the application and information filed and obtained from inspection, recommendations and the records, including zoning maps.

15. DEFFERALS: If a deferral has been requested, the name may be granted by the Board only upon the following conditions:

- a. Upon agreement of the parties concerned; or
- b. Only for good cause meeting with the approval of the majority of the Board Members present; and
- c. If a deferral is granted and it is necessary to re-notify parties concerned, the cost of said new notices and advertisements should be at the expense of the party requesting the deferral.

The Community Zoning Appeals Board may not defer action on an application beyond the next regularly scheduled zoning hearing date, unless applicants consents thereto or unless required otherwise by the provisions of Chapter 33.

When a motion for deferral does not carry by majority vote, or ends in tie vote, the motion shall be considered to have failed, and the matter shall still be before the Board for further action and disposition.

16. ATTENDANCE OF WITNESSES AND OATHS: The Chairperson, Vice Chairperson or Acting Chairperson may administer oaths and compel the attendance of witnesses in the same manner prescribed in the Circuit Court.

17. CONFLICT OF RULES: In the event these rules and regulations conflict with Chapters 2 and 33 of the Code of Miami-Dade County, the Code shall control and supersede these rules and regulations.

18. ATTENDANCE OF BOARD MEMBERS: All Board Members are required to provide prior notice in writing to the Secretary of the Board if unable to attend a specific meeting. Notwithstanding any other provision of the Code, any board member shall be automatically removed if, in a given fiscal year: (i) he or she is absent from two (2) consecutive meetings without an acceptable excuse; or, (ii) if he or she is absent from three (3) of the board's meetings without an acceptable excuse. A member of a County board shall be deemed absent from a meeting when he or she is not present at the meeting at least seventy-five (75) percent of the time. An "acceptable excuse" is defined as an absence for medical reasons, business reasons, personal reasons, or any other reason which the board, by a two-thirds vote of the membership, deems appropriate. By a two-thirds (2/3) vote of the members of the full Board of County Commissioners, the provisions of this section may be waived. Sec. 2-11.39

PROCEDURE TO PRESENT AN APPLICATION BEFORE CZAB

- Department introduces application
- Director's Recommendations presented upon request
- Applicant's presentation
 - Once the applicant presents the application, call for people in support of the application. *"Is there anyone present IN FAVOR of item no. _____?"*
The Chair recognizes non present. However, If there is someone present, then *"Could you please come forward and state your name and address for the record?"*
 - Call for objectors of the application. *"Are there any OBJECTORS on item no. _____?"* The Chair recognizes none present. If there is someone, then *"Could you please come forward and state your name and address and your objection for the record?"*
- Objector's Presentations
- Applicant's Rebuttal
 - If there are objectors, then the applicant must be given an opportunity for rebuttal. *Chair will ask for rebuttal.* Rebuttal should be limited to only those issues that were brought up by the objectors. Once the objectors are done speaking, they cannot return to the podium to argue the applicant's rebuttal. Chair will ask, *"Have you concluded your rebuttal?"*
- Chairperson calls for a motion on the matter pending when chairperson feels there has been significant discussion
 - *"Are the members ready for a motion? A motion to approve/deny application is made by? Seconded by?"*
- Board votes and announces decision
 - *"All those in favor say aye. All those opposed? Motion carries ?-0"* (count of the motion).
- Conclusion
 - *"Ladies and gentlemen, this concludes the Community Zoning Appeals Board meeting of DATE OF MEETING."*

RULES OF CONDUCT/PROCEDURES FOR NON-ZONING COMMUNITY COUNCILS MEETING

1. **ACTIVITIES:** The responsibilities set forth in Section 20-41 of the Code of Miami-Dade County, defines the non-zoning activities of the community councils. At the request of a community council or the Director of Planning and Zoning (DP&Z) or his designee, the County Attorney will render an opinion if a specific activity is within the scope of the council's responsibilities. Other council concerns and issues may be addressed within the limitations of available staff and time.
2. Each community council will be consistent with the overall schedule of the non-zoning activities with which the participation of the community councils must be coordinated. The initial organizational meeting of councils at which officers will be elected shall, to the extent feasible, be held when all council members have been elected or appointed. Appropriate orientation and training will be provided to new council members. Quarterly meeting of community council chairpersons may be conducted as necessary in a central location for purposes of exchanging information and ideas and coordinating non-zoning activities. The councils shall conduct all business as a whole; there shall be no separate subcommittee structure and no separate subcommittee meetings.
3. **STAFF:** The Department of Regulatory and Economic Resources (RER) will be responsible for the overall administration of the community council program, support of non-zoning, zoning and planning activities and coordination of the involvement of other county departments. A RER member shall be designated as executive secretary to each community council. At his discretion, the County Manager will assign staff from other County agencies for the support of other community council activities, as needed.
4. **MEETINGS:** To the extent feasible, non-zoning activities of community councils will be conducted in separate meetings from meetings in which activities are conducted by councils sitting as community zoning appeals boards. The meetings of the Board shall be held at such place and at such time as may be designated by the Director of Miami-Dade County Department of Regulatory and Economic Resources. The meetings shall be held in a facility within the boundaries of the council area to the extent possible. Non-zoning meetings shall be held on an as needed basis generally but no more than every other month except where a specific activity requires that a meeting be held on a different schedule. At least 7 calendar days prior to each meeting of a community council, notice of the time and place of the meeting shall be published in a newspaper of general circulation or in a regularly published section or supplement thereto which is distributed within the geographic boundaries of the community council area. All meetings shall be held no earlier than 5:00 p.m. and the last agenda item shall be called no later than 9:00 p.m. All meetings shall be adjourned no later than 11:00 p.m., subject to any additional times limitations imposed by the operator of the meeting facility. During those portions of council meetings designated as public hearings, public participation shall be permitted. All other council business shall be conducted in executive session in which public participation shall be permitted only upon approval by the Chairperson or majority vote of the council.
5. **AGENDA:** The agenda for non-zoning community council meetings shall be established

by the council chairperson and the council executive secretary. Material for the meeting shall be prepared by RER and distributed to members approximately three calendar days prior to the meeting date.

6. **COUNCIL OFFICERS:** A chairperson and vice-chairperson shall be elected by the community council at the initial organization meeting and annually at an October or November meeting thereafter. The officers shall take office immediately and shall serve until successors have been duly elected. In no event shall the chairperson serve more than two consecutive one-year terms. The chairperson shall be the presiding officer and the vice-chairperson shall preside over the community council in the absence of the community council.
7. He or she shall state every question coming before the community council and announce the decision of the community council on all matters coming before it. The chairperson may vote on all questions coming before the community council for a decision. The chairperson may make a motion or second a motion, but in doing so shall relinquish the chair. In the event that neither the chairperson nor vice-chairperson is present or able to act, the members present shall designate a temporary chairperson.
8. **CALL TO ORDER:** The Chairperson shall take the chair at the hour appointed for the meeting and shall immediately call the council to order. In the absence of the Chairperson, the Vice-Chairperson shall assume all the duties of the Chairperson. In the absence of the Chairperson and the Vice-Chairperson, the Secretary of the Council shall determine whether a quorum is present and shall call for election of a temporary chairperson. Upon the arrival of the Chairperson or Vice-Chairperson, the temporary chairperson shall relinquish the chair upon the conclusion of the business immediately before the Council.
9. **ROLL CALL:** Before proceeding with the business of the Council, the Executive Secretary shall call the roll of the members in alphabetical order and the names of those present and absent shall be entered in the minutes.
10. **QUORUM:** Four (4) members of the Council shall constitute a quorum. No resolution or motion shall be adopted by the Council without the affirmative vote of three (3) of the members present and voting, except in those cases where a greater vote may be required by the Code of Miami-Dade County. The names of the members present and their action as such meeting shall be recorded by the Secretary. Should no quorum attend within 30 minutes after the hour appointed for the meeting of the Council, the Chairperson or the Vice-Chairperson, or in their absence, the Secretary, may adjourn the meeting to a date as determined by the Director. No meeting shall be conducted in the absence of a quorum.
11. **DECORUM:** Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council, shall be barred from further audience before the Board by the presiding officer, unless permission to continue or again address the Board be granted by the majority vote of the Board members present. No clapping, applauding, heckling or verbal outbursts in support or opposition to a speaker or the speaker's remarks shall be permitted. No signs or placards shall be allowed in the meeting room. Persons exiting the meeting room shall do so quietly.

- 12. RULES OF DEBATE:** When a motion is presented and seconded, it is under consideration and no other motion shall be received thereafter, except to adjourn, defer or amend until the question is decided. These orders shall have preference in the order in which they are made. Every member desiring to speak for any purpose shall address the Chairperson and upon recognition shall confine discussion and comments to the question under debate, avoiding all personalities and indecorous language. A member once recognized shall not be interrupted when speaking unless it is to call the member to order. If called to order, the member shall cease speaking until the question of order is determined by the Chairperson and, if in order, the member shall be permitted to proceed.
- 13.** Any member may appeal to the Council from the decision of the Chairperson upon a question of order when, without debate, the Chairperson shall submit to the Council the question "Shall the decision of the Chair be sustained?" and the Council shall decide by a majority vote. When a vote is taken by roll call, there shall be no discussion by any member prior to voting and the members shall either vote yes or no. Any member, upon voting, may give a brief statement to explain his or her vote. All members are subject to the Conflict of Interest and Code of Ethics Ordinance pursuant to Section 2-11 of the Code of Miami-Dade County.
- 14. READING MINUTES:** An audio recording of each council meeting shall be made and retained in the offices of RER in a manner consistent with the public records law. A brief written summary of each meeting shall be prepared and signed by the executive secretary of the council. Upon approval by the council, that summary shall constitute the official minutes of the meeting. The minutes shall be kept on file in the offices of RER and shall be available for inspection by any council member or the general public. The minutes shall include the decision of the council and the vote of each member on each question. If a member is absent from voting, the minutes shall so indicate.
- 15. VOTING:** The vote upon every motion or resolution shall be either vote by voice, by a show of hands, at the discretion of the Chairperson, or at the discretion of the Chairperson, or at the request of any members, by roll call in progressive alphabetical order, except the Chairperson shall be the last member called. All resolutions adopted by the Council shall be filed with the Clerk of the Board of County Commissioners and shall be maintained in an appropriate records book provided by the Clerk. All resolutions reflecting an action of a council shall be prepared as soon as practical thereafter by the executive secretary or the secretary's designee, who shall attest that the same was duly adopted and shall transmit copies to the appropriate entities.
- 16. PRESENTATIONS:** Each person addressing the Council shall give his or her name and address in an audible tone so that the same may be part of the record; all remarks shall be addressed to the Council as a group and not to any individual member. No person, other than a Council Member or Staff Member and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the Council, without permission of the presiding officer. No question shall be asked unless the same is addressed through the presiding officer.

- 17. COMMUNICATIONS:** Consistent with the State Sunshine Law, all communications between community council members on council matters will be conducted only during council meetings. Communications between individual community council members and county staff on non-zoning issues shall be coordinated through the Community Council Non-Zoning Administrative Staff at RER
- 18. CONFLICT OF RULES:** In the event these rules and regulations conflict with Chapters 2 and 33 of the Code of Miami-Dade County, the Code shall control and supersede these rules and regulations.
- 19. EXPENSES:** Council members will be reimbursed for parking and Metrorail costs for attendance at scheduled central location events. Council members will also be provided with photo identification cards. No other expense shall be reimbursable.
- 20. BUSINESS CARDS AND STATIONARY:** Are provided to the Council members at no expense by the Department of Regulatory and Economic Resources.
- 21. ATTENDANCE OF BOARD MEMBERS:** All Board Members are required to provide prior notice in writing to the Secretary of the Board if unable to attend a specific meeting. Notwithstanding any other provision of this Code, any board member shall be automatically removed if, in a given fiscal year: (i) he or she is absent from two (2) consecutive meetings without an acceptable excuse; or, (ii) if he or she is absent from three (3) of the board's meetings without an acceptable excuse. A member of a County board shall be deemed absent from a meeting when he or she is not present at the meeting at least seventy-five (75) percent of the time. An "acceptable excuse" is defined as an absence for medical reasons, business reasons, personal reasons, or any other reason which the board, by a two-thirds vote of the membership, deems appropriate. By a two-thirds (2/3) vote of the members of the full Board of County Commissioners, the provisions of this section may be waived. Sec. 2-11.39

CODE OF MIAMI-DADE COUNTY

ARTICLE IV

Sec. 20-40. Community Councils; creation and purposes.

There are hereby established and created Community Councils to serve the unincorporated Miami-Dade County. Community Councils are established for the following purposes:

- (1) Providing the residents of unincorporated Miami-Dade County with increased governmental accountability, and responsiveness in decision-making processes for the delivery of municipal-type services;
- (2) Improving the effectiveness of services by making them more responsive to community desires and needs;
- (3) Retaining efficiencies of services by maintaining economies of scale;
- (4) Maintaining the ability to match unincorporated area needs with available resources; and

- (5) Fostering a sense of community identity, inclusiveness and empowerment.
(Ord. No. 96-126, § 1, 9-4-96).

Sec. 20-41. Community Councils; responsibilities.

(A) Community Councils shall perform the duties and responsibilities of Community Zoning Appeals Boards as set forth in Section 33-306 of the Code of Miami-Dade County.

(B) Community Councils may, at their option, perform the following duties and responsibilities:

(1) *Planning.*

(a) Compile profiles of their respective community's social, physical and economic conditions to assist them in performing their duties;

(b) Prepare an annual statement of community needs including development patterns and regulations, public facilities and services to assist the Council;

(c) Make recommendations to the Planning Advisory Board and Board of County Commissioners on proposed Miami-Dade County Comprehensive Development Master Plan amendments that impact each Council's area; and

(d) Make recommendations to the County Commission on the location and siting of specific public facility and infrastructure projects.

(2) *Protection of persons and property programming.*

(a) Recommend policies to coordinate the Fire Rescue District and Police Department in the enhancement of public safety and protection of property in the council area through improved communications and service needs assessments.

(3) *Budgeting.*

(a) Make recommendations to the County Manager and County Commission on priorities for community facilities and services and on community based organization grants for the council area; and

(b) Make recommendations to the County Manager and County Commission on revenue needs including unincorporated area property taxes millages and special taxing districts.

(4) *Communication.*

(a) Conduct forums on council area issues to facilitate the exchange of information between residents, property owners, businesses, institutions and County Officials and Administrators;

(b) Disseminate information about council area related organizations, programs and activities; and

(c) Coordinate with Miami-Dade County's Department of Regulatory and Economic Resources in the exercise of that agency's responsibilities within the council area.

(C) No member of a Community Council shall appear at any public hearings or meetings before the Board of County Commissioners or any other federal, state, or local board or tribunal, to advocate concerning any zoning application that was heard by, or that could reasonably be expected to be heard by, any Community Council.

(Ord. No. 96-126, § 1, 9-4-96; Ord. No. 05-139, § 1, 7-7-05)

Sec. 20-42. Community Councils; configuration.

(A) There shall be no more than (10) Community Councils each of which shall have jurisdiction within its boundary within the unincorporated area. Council areas should be large enough to reasonably accommodate local zoning issues without unduly increasing staffing requirements. The boundaries of Community Councils' jurisdiction, to the extent feasible, shall coincide with those of groupings of Census Designated Places.

(B) Each Community Council area shall contain no more than six (6) subareas. The boundaries of these subareas, to the extent feasible, shall coincide with those of existing election precincts. Enclave areas that are fully surrounded by municipal boundaries and are not large enough to be subareas shall be part of the nearest subarea.

(C) The boundaries and numerical designations of the Community Councils and of the subareas within them are depicted and described in Attachment I attached hereto and incorporated herein by reference [which can be found in the County Clerk's office]. These boundaries may be amended from time to time by resolution of the County Commission after public hearing. The names of the Community Councils shall be designated by the respective Community Council.

(D) Notwithstanding anything in this Code to the contrary, when, as a result of municipal incorporation or annexation, a Community Council does not have enough members in office to act, the Board of County Commission may by resolution after public hearing, reassign the remaining areas of the affected Community Council to a different Community Council and modify the total number of Councils accordingly.

(Ord. No. 96-126, § 1, 9-4-96; Ord. No. 97-16, § 2, 2-25-97; Ord. No. 97-163, § 1, 9-23-97; Ord. No. 01-17, § 1, 1-23-01; Ord. No. 04-101, § 1, 5-11-04)

Sec. 20-43. Community Councils; membership.

Except as provided in subsection (E), Community Councils shall have seven (7) members, six (6) of whom shall be elected at large within the council area and one (1) of whom shall be appointed by the Board of County Commissioners as follows:

(A) *Elected Council Members.*

- (1) Elected Council Members shall, for at least six (6) months prior to qualifying, have been resident electors of the council area for which they are qualifying, and, for at least three (3) years prior to qualifying, resident electors of Miami-Dade County. Additionally, each elected Council Member seeking to represent a subarea shall, for three (3) months prior to qualifying, have been a resident elector of the separate subarea of the council area for which the Member is qualifying. At the time of qualifying candidates shall submit proof of residency for the prescribed period to the supervisor of elections. Proof of residency shall establish that the qualifying candidate has met the residency requirements for the required period. Any person misrepresenting their residency shall, upon conviction, be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed sixty (60) days in the County jail or both, at the discretion of the court. No Council Member shall be employed by Miami-Dade County or be a member of the County Commission.
- (2) The term of office of Community Council members shall be for four (4) years. It is provided, however, that when a Community Council has been modified to establish new subareas or at large areas, in the initial election of Council Members, those members representing even-numbered subareas shall serve a two-year term and those members representing odd-numbered subareas or at large areas shall serve a four-year term so as to create staggered terms. Thereafter all Council

Members shall serve four-year terms. When a subarea is dissolved and is replaced by an at large area, the at large representative shall serve until expiration of the term of office that was provided for the dissolved subarea. It is further provided that when a Community Council consisting of one (1) subarea is created in the initial election three (3) seats shall be designated as two-year terms and three (3) seats shall be designated as four-year terms so as to provide staggered terms. Thereafter, all Council members shall serve four-year terms.

- (3) All elections for Community Council Members shall be non-partisan. The initial general election for Council Members shall be held at the time of the 1996 General Election. Subsequent elections of Council Members shall be held in each even numbered year, in conjunction with state primary elections. The terms of Council Members shall commence on the second Tuesday next succeeding the date provided for the state general election.
- (4) All candidates for Community Councils shall qualify with the Clerk of the Circuit Court no earlier than the 72nd day and no later than noon of the 70th day prior to the date of the election at which he or she is a candidate, in the manner provided by law or ordinance. Each candidate shall pay a filing fee of one hundred dollars (\$100.00).
- (5) All elections for Community Councils shall be canvassed by the County Canvassing Board as provided under the election laws of this state.
- (6) The election ballot for the Council Member of each council area shall contain the names of all qualified candidates for election for Council positions from each subarea and shall instruct the electors to cast one (1) vote for the subarea position for which an election is being held. The candidate receiving the greatest number of votes shall be duly elected to that Council Seat. If there is a tie vote among the two (2) candidates receiving the greatest number of votes, there shall be a run-off election.

The ballot for any run-off election for a Council Seat shall contain the names of the two (2) candidates for the Council Seat who received the most votes. The ballot shall instruct electors of the council area to cast one (1) vote for each subarea position. The candidate for each Council Seat receiving the most votes in such run-off election shall be duly elected to that Council Seat.

Provided, however, where there are fewer than six (6) subareas in a council area the number of persons to be elected from each subarea shall be as follows:

- (a) Where there are five (5) subareas the electors of the entire council area shall elect one (1) member from each subarea and one (1) member at large.
- (b) Where there are four (4) subareas the electors of the entire council area shall elect one (1) member from each subarea and two (2) members at large.
- (c) Where there are three (3) subareas the electors of the entire council area shall elect two (2) members from each subarea.
- (d) Where there are two (2) subareas the electors of the entire council area shall elect three (3) members from each subarea.
- (e) Where there is one (1) subarea there shall be six (6) members elected from the subarea.

Where there is more than one (1) position available in a subarea for election, the candidates with the largest number of votes shall be elected to those positions. In the event that a subarea election has positions for both expired and unexpired terms, the candidates elected with the least number of votes shall fill the positions for the unexpired terms. It is provided, however, where the number of persons qualifying for a Community Council election is equal to the number of positions both for expired and unexpired terms the candidates filling the unexpired terms shall be determined by lot.

- (7) *Vacancies.* The County Commissioner whose district encompasses the greatest total population within the Community Council area, based on population data from the decennial Census, shall fill any vacant Council positions, by the appointment of an individual meeting the qualifications provided in subsection (1) above from a list of one or more names supplied by the Community Council. A person appointed shall serve until the earlier of the following: (1) the next primary election; or (2) expiration of the term of office for which the appointment is made. This limitation on term length shall apply to any person appointed by either a Community Council or a County Commissioner, whether appointed prior to or after the effective date of this ordinance. A person elected at such county-wide election shall serve for the remainder of the unexpired term. It is provided, however, in the event there is an insufficient number of Community Council Members in office to constitute a quorum, the County Commissioner whose district encompasses the greatest total population within the Community Council area, based on population data from the decennial Census, shall appoint a sufficient number of members necessary to constitute a quorum. Further, should any Community Council fail to supply a list of one or more names for any vacant Council position

within ninety (90) days from the date such position becomes vacant or that the names supplied within such time period are not acceptable to the appointing County Commissioner, the County Commissioner whose district encompasses the greatest total population within the Community Council area, based on population data from the decennial Census, shall appoint an individual meeting the qualifications set forth in subsection (1) above to fill such vacancy, except that such County Commissioner may appoint any resident elector within the council area, regardless of whether that elector resides within the subarea represented by the vacant position. In the event any Council Member no longer resides in a Council subarea for a subarea position or Council area for an at large position, that person shall be deemed to have tendered their resignation from such Council; provided, however, any Council Member who, as a result of a modification to the configuration of a Council subarea pursuant to Section 20-42, is no longer qualified to be an elected member of such Council, shall be permitted to complete the term of office commenced prior to the subarea boundary modification.

(B) *Appointed Council Members.*

- (1) The County Commissioners shall appoint one (1) member to each Community Council following each election of Council Members. Each appointed Community Council Member shall have been for at least six months prior to appointment a resident elector of the Council area, and, for at least three (3) years, a resident elector of Miami-Dade County. No appointed Council Member shall be employed by Miami-Dade County or be a member of the County Commission. These members shall be appointed by the County Commissioner(s) whose district(s) includes the greatest total population within the Community Council area, based on population data from the decennial Census. Appointments shall be confirmed by a majority of the Board of County Commissioners.
- (2) The term of each appointed Council Member shall be four (4) years; provided, however, the term of each member expires when the Commissioner who appointed that member leaves office. Each member shall hold office until a successor has been duly appointed, qualified and confirmed. Vacant Council Member positions shall be filled for the unexpired term in the same manner as other appointed Council Members.

(C) *Organizational meeting.* The first organizational meeting of each Community Council shall take place on the 30th day, or as soon thereafter as is practical, after the date of the general election. In the event of a tie vote for one (1) or

more Council seats in the general election such Community Council shall meet on the 30th day, or as soon thereafter as is practical, after the date of the run-off election. At the organizational meeting, or as soon thereafter as is practical, each Community Council shall elect a chair and vice-chair from its members who shall serve a one-year term.

- (D) *Reimbursements of expenses.* All Council Members shall serve without compensation but shall be entitled to reimbursement for necessary expenses incurred in the performance of their official duties, upon approval of the County Commission.
- (E) *Reassignment of Community Council Members.* When, as a result of incorporation or annexation, subareas or portions thereof are reassigned to a different Community, elected or appointed Council Members who continue to reside in the unincorporated area, whether at-large or subarea representatives representing the reassigned areas, shall serve as additional members to the reassigned Community Council. The reassigned Council Members shall serve until the next first state primary election.
- (F) Community Councils shall have the following nonvoting members when acting as Community Zoning Appeals Boards:
 - (1) A representative appointed by the School Board of Miami-Dade County, who may attend those meetings at which a Board considers a zoning action that would, if approved, increase residential density on the property that is the subject of the application.
 - (2) A representative appointed by the commanding officer of the Homestead Air Reserve Base, who may attend those meetings at which a Board considers a zoning action that, if approved, would affect the intensity, density, or use of the land adjacent to or in close proximity to the military installation.

(Ord. No. 96-126, § 1, 9-4-96; Ord. No. 96-165, § 1, 11-12-96; Ord. No. 96-185, § 1, 12-17-96; Ord. No. 97-16, § 2, 2-25-97; Ord. No. 99-108, § 1, 9-9-99; Ord. No. 00-35, § 1, 3-21-00; Ord. No. 02-28, § 1, 2-26-02; Ord. No. 02-41, § 1, 3-26-02; Ord. No. 02-91, § 1, 6-6-02; Ord. No. 03-267, § 1, 12-8-03; Ord. No. 04-101, § 1, 5-11-04; Ord. No. 06-115, § 1, 7-18-06; Ord. No. 07-123, § 1, 9-4-07; Ord. No. 07-146, § 2, 10-2-07; Ord. No. 08-20, § 1, 2-7-08; Ord. No. 12-85, § 1, 10-2-12; Ord. No. 13-60, § 1, 6-18-13)

Sec. 20-43.1. Community Councils; recall.

Any elected member of a Community Council or any member appointed by the Community Council pursuant to Section 20-43(A)(7) may be removed from office by the electors of the Council area. The procedure for removal by electors shall be as follows:

- (1) The person proposing the exercise of recall shall submit the recall petition to the Clerk of the Circuit Court for approval of the form of the petition. Recall petitions shall be submitted for

approval during the months of January and June only.

(2) The person or persons circulating the recall petition shall, within sixty (60) days after approval of the form of the petition, obtain the valid signatures of electors in the council area in numbers at least equal to ten (10) percent of the registered voters in the council area on the date on which the recall petition is approved, according to the official records of the County Supervisor of Elections. Each signer of a petition shall place thereon, after his or her name, the date and the signer's place of residence or precinct number. Each person circulating a copy of the petition shall attach to it a sworn affidavit stating the number of signers and the fact that each signature was made in the presence of the circulator of the petition.

(3) The signed petition shall be filed with the Clerk of the Circuit Court which shall within thirty (30) days after filing order a canvass of the signatures thereon to determine the sufficiency of the signatures. If the number of signatures is insufficient or the petition is deficient as to form or compliance with this section, the Clerk shall notify the person filing the petition that the petition is insufficient and has failed. The Clerk shall certify the petition if the number of signatures is sufficient and the petition if sufficient as to form and compliance with this section.

(4) The Board of County Commissioners must provide for a recall election not less than forty-five (45) days nor more than ninety (90) days after certification of the petition.

(5) The question of recall shall be placed on the ballot in a manner that will give the elector a clear choice for or against the recall. The result shall be determined by a majority vote of the electors voting on the question.

(6) If the majority is against recall the Community Council member shall continue in office under the terms of the member's previous election or appointment. If the majority is for recall, the member shall, regardless of any defect in the recall petition, be deemed removed from office immediately.

(7) No recall petition against an elected Community Council member shall be certified within one (1) year after the member takes office nor within one (1) year after a recall petition against the member is defeated.

(8) Any vacancy created by recall in a Community Council shall be filled for the remaining term by appointment in the manner prescribed for filling vacant positions.

(Ord. No. 97-196, § 1, 11-4-97; Ord. No. 01-72, § 1, 4-10-01)

Sec. 20-43.2. Community Councils; removal.

Any elected or appointed member of a Community Council may be removed from office for cause by resolution of the Board of County Commissioners. The following events shall be deemed sufficient cause for removal: malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or indictment for crime. Any vacancy created by removal in a Community Council shall be filled for the remaining term by appointment in the manner prescribed for filling vacant positions.

(Ord. No. 97-196, § 1, 11-4-97)

Sec. 20-44. Community Councils; organization; new member orientation; bi-annual orientation workshop.

(A) The County Manager shall assign existing County staff positions to provide support for the Community councils, to the fullest extent feasible. Such staff may include: a Community Council Administrator, an Administrative Assistant, clerical staff and others as the County Manager deems needed. The Department of Regulatory and Economic Resources shall develop strong linkages to each Community Council.

(B) The County Manager shall coordinate the activities and schedules of Community Councils with other County activities to ensure maximum effectiveness and efficiency. The County

Manager may limit the total staff time available to each Community Council.

(C) Within parameters recommended by the County Manager and approved by the County Commission, Community Councils shall be empowered to establish their own procedures for conducting their business and to select from the activities described in Section 20-41(B) those in which it wishes to engage. It is provided however that zoning procedures shall be adopted pursuant to Sections 33-308 of the Code. It is further provided that no zoning or non zoning meeting of a Community Council or Community Zoning Appeals Board shall extend beyond 11:00 p.m.

(D) Prior to serving on a Community Council, a Community Council member appointed or elected to a Council after the effective date of this ordinance shall attend a New Member Orientation Seminar conducted by the Department of Regulatory and Economic Resources, the Commission on Ethics, and the County Attorney's Office. The seminar shall include, but shall not be limited to, review of the Comprehensive Development Master Plan and issues related thereto, review of zoning regulations, incorporation and annexation issues, workforce and affordable housing issues and applicable laws, rules and regulations pertaining to duties and responsibilities of Community Council members.

(E) All Community Council members shall attend an Annual Community Council Workshop organized and conducted by the Department of Regulatory and Economic Resources, the Commission on Ethics, and the County Attorney's Office. The Workshop shall include, but shall not be limited to, review of the Comprehensive Development Master Plan and issues related thereto, review of zoning regulations, incorporation and annexation issues, workforce and affordable housing issues and applicable laws, rules and regulations pertaining to duties and responsibilities of Community Council members.

(F) Notwithstanding Section 20-43.2, failure of any elected or appointed member of a Community Council to attend an annual Community Council Workshop shall be deemed sufficient cause for removal.

(Ord. No. 96-126, § 1, 9-4-96; Ord. No. 99-67, § 1, 6-8-99; Ord. No. 05-171, § 1, 9-8-05)

Sec. 20-45. Community Councils; conflict of interest.

In addition to the provisions of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, each Community Council member is prohibited from voting on or participating in any way in any matter presented to the Community Council on which the member serves if the member has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Community Council on which the member serves: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the Community Council member in a manner distinct from the manner in which it would affect the public generally. Any Community Council member who has any of the above relationships or who would or might, directly or indirectly, profit or be enhanced by the action of the Community Council on which the member serves shall absent himself or herself from the Community Council meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter.

(Ord. No. 97-196, § 1, 11-4-97)

Miami –Dade County

Commission on Ethics and Public Trust

Joseph Centorino, Executive Director

Ethics and Public Trust

19 West Flagler,

Suite 820

Miami, Florida

33130

(305) 579-9093 Ethics Hotline

(305) 579-0273 Fax

ethics@miamidade.gov

CONFLICT OF INTEREST AND CODE OF ETHICS

(Sec.2-11.1 Through Sec.2-11.3)

COMMISSION ON ETHICS AND PUBLIC TRUST

FREQUENTLY ASKED QUESTIONS

How is the Ethics Commission funded?

Currently, the exclusive funding source for the Commission is Miami-Dade County. The Ethics Commission may accept grants, contributions or appropriations from the federal government,

state government, any municipality within Miami-Dade County, or any academic institution or nonprofit entity which has not entered into a contract or transacted business with the County.

Can I attend meetings of the Ethics Commission?

Absolutely!

What is the purpose of the request for an opinion?

Employees and officials are occasionally faced with situations where they are unsure how to proceed. If the employee or official believes that a conflict of interest could be created by taking a certain course of action, then that person can ask the Ethics Commission for a written opinion.

Who actually issues the opinion?

Once the request is submitted, it will be analyzed by the **legal staff** and presented to the Ethics Commission for an official determination. Once that occurs, the requester will receive a written opinion signed by the Executive Director stating the Commission's opinion and reason(s) for that opinion.

What is the effect of a probable cause determination?

If requested by the alleged violator, a public hearing will be scheduled. The full Commission on Ethics is impaneled to hear the case. The hearing is scheduled no later than sixty days after the probable cause determination. An attorney will present the case on behalf of the Commission, the alleged violator most likely will hire legal counsel, witnesses will testify, evidence will be introduced and the Ethics Commission will render a ruling. If a violation is found, penalties can be imposed against the violator.

If the Ethics Commission holds a public hearing resulting from a complaint I have filed, what is my role at the hearing?

In most cases, the complainant will be a witness. The complainant is not an actual party and has no burden of proving the case.

As an alleged violator of an ordinance, what rights do I have in the event the Commission finds probable cause?

All respondents are entitled to a public hearing in front of the Ethics Commission. The request for a public hearing must be made within 21 days following the mailing of the probable cause determination.

What penalties can the Ethics Commission assess?

This depends upon the ordinance being enforced. The Commission may impose fines, admonish or reprimand violators or draft letters of instruction. Any final order or advisory opinion issued by the Ethics Commission is subject to review with the Florida Rules of Appellate Procedure.

Conflict of Interest and Code of Ethics Ordinance **in Plain Language** **(Sec.2-11.1 Through Sec.2-11.3)**

The Conflict of Interest and Code of Ethics ordinance establishes the minimum standard of ethical conduct and behavior for elected officials, public employees, members of county and municipal advisory boards and quasi-judicial bodies.

Transacting Business

Employees may contract with the county or the municipality by which they are employed as long as they are not involved in the award of the contract, in determining contract provisions and enforcement of the contract.

Elected officials, city or county managers, department heads, city and county attorneys and advisory board members may not contract with the county or municipality by themselves or through any corporation in which they hold a controlling financial interest unless they are eligible for a bid waiver as provided in Section 2-11.1(c).

Employees may not contract with their own department even if they are not involved in award, enforcement or oversight of the contract.

Immediate family members (spouse, parents and children) are also prohibited from contracting under the ordinance. A controlling financial interest is defined as ten percent or more.

Voting Conflicts

Commissioners may not vote on matters in which they would or might profit or be enhanced by the vote.

Commissioners may not vote on any matter in which they have any of the following relationships with the person or entity seeking a benefit:

1. Officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary
2. Stockholder, bondholder, debtor or creditor.

Commissioners may not vote on matters or participate in discussion regarding matters in which the decision will affect them in a matter distinct from the matter in which it will impact the public generally.

Gifts

An elected official is prohibited from soliciting or accepting any gift because of:

1. An official action taken;
2. To be taken; or
3. Which could be taken

A gift is defined under the ordinance as anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise without adequate and lawful consideration.

The following items are exempted from the definition of gift under the ordinance:

1. Political contributions;
2. Gifts from relatives and members of one's household;
3. Awards for civic and professional achievement;
4. Informational books and pamphlets;
5. Gifts solicited by employees for official use by the county or municipality; and
6. Gifts solicited by commissioners on behalf of the county or municipality in conducting their official business. All gifts or series of gifts which exceed one-hundred dollars in

value must be reported.

Exploitation of Official Position

An elected official may not use or attempt to use his or her official position to secure special privileges and exemptions for himself or herself or others.

Prohibition on Use of Confidential Information

Elected officials, city or county managers and attorneys, employees and advisory board members may not accept employment or engage in any activity that may require or induce them to disclose confidential information acquired through their position; and shall not use such information for personal gain or benefit.

Financial Disclosure

Elected officials must file financial disclosure forms with the Department of Elections by July 1st of each year including the July 1st following the last year the person has held office.

Elected officials may file either of the following:

1. A copy of the person's or firm's current federal income tax return;
2. a current certified financial statement on the form approved by the State of Florida; or
3. an itemized source of income statement.

Compliance with state financial requirements satisfies the code's financial disclosure requirements.

Candidates for elective office are also required to satisfy financial disclosure requirements.

Outside Employment

Employees and departmental personnel may not receive compensation for his or her services as an officer or employee of the County or city from any other source except as may be permitted. Employees and other departmental personnel may not accept outside employment which would impair the performance of his or her public duties.

Two-Year Rule

No elected official may for a period of two years after they leave office lobby any county or municipal official or employee in connection with any proceeding, application, bid, RFP, RFQ, request for ruling or other determination, contract, claim, controversy, charge, arrest in which the county or the municipality or any of its agencies has any interest.

The provisions of this section do not apply to persons who are employed by government entities, 501(c)(3) non-profit or educational entities who lobby on behalf of said organization.

Any elected official who left elective office in the two years prior to February 1, 1999 must submit an affidavit certifying that they were not directly or indirectly involved in the matter on which they are lobbying during their county or municipal service.

Cone of Silence

The Cone of Silence prohibits oral communication between vendors, bidders, lobbyists and the county or municipality's professional staff including the manager and his or her staff between the time that the bid, RFP or RFQ is being drafted by the Department of Procurement Management or the issuing department and the written recommendation of the city or county manager to the county or city commission or council.

The Cone of Silence also prohibits oral communication regarding the bid, RFP or RFQ between the Mayor, County or City Commissioners and their respective staff and any member of the county or city's professional staff between advertisement of the bid, RFP and RFQ and the manager's written recommendation.

The Cone of Silence does not apply to communications with the county or city attorney and his or her staff, communications with the technical assistance unit of the Department of Business Development regarding CSBE or minority business programs, duly noticed site visits and emergency procurement of goods or services.

The Cone of Silence also does not apply to pre-bid conferences, selection committee presentations, contract negotiations or presentations before the Board of County Commissioners or a municipal commission or council.

The Cone of Silence does not prohibit communications between a vendor, service provider, bidder lobbyist or consultant and the Vendor Information Center staff, the procurement agent or the contracting officer as long as the communication is limited to matters of process or procedure.

The Cone of Silence does not prohibit the communications between the procurement officer or the contracting officer and a member of the selection committee as long as the communication is limited to matters of process or procedure.

Prohibited Business Transactions

No elected official, member of an official's staff, county or city manager, assistant county or city manager or department director may enter into a contract with a person or entity that is doing business with the county or the municipality of which the covered person is affiliated unless the transaction is an arms-length transaction made in the ordinary course of business.

No elected official, member of an official's staff, county or city manager or department director may enter into a transaction with a shareholder, partner, officer, director or employee of said contractor.

A person covered under this section may enter into a contract with a not for profit corporation. Business transaction is defined in this section of the ordinance as "any contract wherein persons either sell, buy, deal, exchange, rent, lend, barter real, personal or intangible property, money or any other thing of value or render service for value."



Financial Statement

For Full-time County and Municipal Employees

Employee ID Number:		Disclosure for Tax Year Ending:	
Last Name:		First Name:	Middle Name:
Filing as (check one): <input type="checkbox"/> Miami-Dade County Employee <input type="checkbox"/> Municipal Employee of _____ <input type="checkbox"/> Advisory Board Member Name of Board _____		BAR CODE	
Title of Position held or sought:		Term/Employment began on:	
Department where employed:		Work address:	
If your home address is exempt from public records pursuant to Florida Statutes § 119.07, please check here <input type="checkbox"/>		Work Telephone:	
Mailing address (street number and name or P.O. Box, city, state, zip):			

FINANCIAL STATEMENT, as required by Miami Dade Co. Code, § 2-11.1(i). Please list the requested information below. Amounts under \$1,000 need not be listed. **If continued on a separate sheet, please check here:** ☐

CASH ASSETS —Balances in savings/checking accounts, savings & loans, banks, credit unions, money market accounts, etc.				
Name of Institution	Address	Account #	Type	Amount
SUBTOTAL, CASH ASSETS				
MARKETABLE SECURITIES Subtotal (List in detail on next page)				
TOTAL MORTGAGES RECEIVABLE Subtotal (List in detail on next page)				
NET WORTH IN BUSINESS (Attach current statement)				
Address of Real Estate owned:		Type of Property: REAL ESTATE OWNED Market Value		
CASH VALUE OF LIFE INSURANCE				
PERSONAL PROPERTY (Car, boat, furniture, etc.)				
OTHER (Describe)				
SUBTOTAL, OTHER ASSETS				
TOTAL, Cash & Other Assets				

LIABILITIES - List Mortgages Payable, Bank Loans, Finance Companies, Etc.						
Owed To	Address	Account#	Date Incurred	Original Amount	Monthly Payments	Balance Due

LIFE INSURANCE PAYMENTS DUE						
ALIMONY AND CHILD SUPPORT PAYMENTS DUE						
NOTE CO-MAKER, ENDORSER OR ORIGINATOR, DUE						
Total Liabilities						

OTHER ASSETS and **MORTGAGES RECEIVABLE**, continued from previous page

MARKETABLE SECURITIES			CURRENT MARKET VALUE	
	Company	# of Shares	Per Share	Total
TOTAL MARKETABLE SECURITIES (Also enter amount in "Other Assets" on first page)				

MORTGAGES RECEIVABLE				
Address	Date	Original Amount	Monthly Payments	Balance Due
TOTAL MORTGAGES RECEIVABLE (Also enter amount in "Other Assets" on first page)				

Total Assets minus Total Liabilities = Net Worth \$ _____	
I hereby swear (or affirm) that the aforesaid information is a true and correct statement. Signature of Person Disclosing	Date Signed

FINANCIAL STATEMENT

(Required by the Miami-Dade County Code, Section 2-11.1 (i), as amended)

The term INCOME shall include, but is not limited to, the following items: wages, salaries, tips; bonuses; commissions & fees; dividends, interest; profit from businesses and professions; your share of profits from partnerships and small business corporations; pensions, annuities & endowments; profits from the sale or exchange of real estate, securities or other property, including personal residence; rents and royalties; your share of estate or trust income, including accumulated distributions; alimony, separate maintenance or support payments; prizes, awards and gifts; fees as an Executor, Administrator, or Director; disability retirement payments; workmen's compensation, insurance; damages, etc.

FILING INSTRUCTIONS

A "Source of Income Form," "Financial Statement," "Form 1," or a copy of personal income tax forms may be filed to satisfy the filing requirement for County employees, municipal employees, and advisory board members. One of these forms must be filed by July 1st of each year. The form should not be used as a substitute for Form 1 for those required to file under the state requirements.

Miami-Dade County personnel and Miami-Dade advisory board members shall file completed forms with:

**Supervisor of Elections
Miami-Dade Elections Department
2700 NW 87th Avenue
Miami, FL 33172**

or

**P.O. Box 521550
Miami, FL 33152-1550**

Municipal personnel and municipal advisory board members shall file completed forms with:

Their Respective Municipal Clerk

For further information, contact the Miami-Dade Elections Department at (305) 499-8413 or Municipal Clerk's Office.

Note re: Florida Statutes § 119.07: The role of our office is to receive and maintain forms filed as public records. If your home address is exempt from disclosure and you do not wish your home address to be made public, please use your office or other address for your mailing address. The following persons are exempt from disclosing their home addresses: active or former law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; firefighters; justices and judges; current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; county and municipal code inspectors and code enforcement officers.

THE SUNSHINE LAW

State of Florida

To assist the public and governmental agencies in understanding the requirements and exemptions to Florida's open government laws, the Attorney General's Office compiles a comprehensive guide known as the Government-in-the-Sunshine manual. The manual is published each year at no taxpayer expense by the First Amendment Foundation in Tallahassee.

Florida is renowned for putting a high priority on the public's right of access to governmental meetings and records. In fact, the principles of open government are embodied not only in Florida statutes, but also guaranteed in the state Constitution.

Florida began its tradition of openness back in 1909 with the passage of what has come to be known as the "Public Records Law," Chapter 119 of the Florida Statutes. This law provides that any records made or received by any public agency in the course of its official business are available for inspection, unless specifically exempted by the Legislature. Over the years, the definition of what constitutes "public records" has come to include not just traditional written documents such as papers, maps and books, but also tapes, photographs, film, sound recordings and records stored in computers.

It was in 1967 that Florida's Government-in-the-Sunshine Law was enacted. Today, the Sunshine Law can be found in Chapter 286 of the Florida Statutes. The Sunshine Law establishes a basic right of access to most meetings of boards, commissions and other governing bodies of state and local governmental agencies or authorities.

Throughout the history of Florida's open government, its courts have consistently supported the public's right of access to governmental meetings and records. As such, they also have been defining and redefining what a public record is and who is covered under the open meetings law. One area of public concern was whether or not the Legislature was covered under the open meetings requirements. To address that concerns, a Constitutional amendment was passed overwhelmingly by the voters in 1990 providing for open meetings in the legislative branch of government.

The Attorney General's Office has consistently sought to safeguard Florida's pioneering Government-in-the-Sunshine laws. Our attorneys have worked, both in the courtroom and out, to halt public records violations. In 1991, however, a Florida Supreme Court decision threatened the people's right to know. The questions raised by this decision made it clear that the best way to ensure the public's right of access to all three branches of government was to secure that right through the Florida Constitution. The Attorney General's Office then drafted a definitive constitutional amendment, the successful passage of which in 1992 not only guaranteed continued openness in the state's government, but also in effect reaffirmed the application of open government to the legislative branch and expanded it to the judiciary.

Florida voters have overwhelmingly showed their support for government in the sunshine at all levels of government. They have made it clear they believe that open government provides the best assurance of government that is responsive and responsible to the needs of the people.

Frequently Asked Questions (FAQs)

The following questions and answers are intended to be used as a reference only -- interested parties should refer to the Florida Statutes and applicable case law before drawing legal conclusions.

Q. What is the Sunshine Law?

A. Florida's Government-in-the-Sunshine law provides a right of access to governmental proceedings at both the state and local levels. It applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. There is also a constitutionally guaranteed right of access. Virtually all state and local collegial public bodies are covered by the open meetings requirements with the exception of the judiciary and the state Legislature which has its own constitutional provision relating to access.

Q. What are the requirements of the Sunshine law?

A. The Sunshine law requires that 1) meetings of boards or commissions must be open to the public; 2) reasonable notice of such meetings must be given, and 3) minutes of the meeting must be taken.

Q. What agencies are covered under the Sunshine Law?

A. The Government-in-the-Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision." Thus, it applies to public collegial bodies within the state at both the local as well as state level. It applies equally to elected or appointed boards or commissions.

Q. Are federal agencies covered by the Sunshine Law?

A. Federal agencies operating in the state do not come under Florida's Sunshine law.

Q. Does the Sunshine Law apply to the Legislature?

A. Florida's Constitution provides that meetings of the Legislature be open and noticed except those specifically exempted by the Legislature or specifically closed by the Constitution. Each house is responsible through its rules of procedures for interpreting, implementing and enforcing these provisions. Information on the rules governing openness in the Legislature can be obtained from the respective houses.

Q. Does the Sunshine Law apply to members-elect?

A. Members-elect of public boards or commissions are covered by the Sunshine law immediately upon their election to public office.

Q. What qualifies as a meeting?

A. The Sunshine law applies to all discussions or deliberations as well as the formal action taken by a board or commission. The law, in essence, is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission. There is no requirement that a quorum be present for a meeting to be covered under the law.

Q. Can a public agency hold closed meetings?

A. There are a limited number of exemptions which would allow a public agency to close a meeting. These include, but are not limited to, certain discussions with the board's attorney over pending litigation and portions of collective bargaining sessions. In addition, specific portions of meetings of some agencies (usually state agencies) may be closed when those agencies are making probable cause determinations or considering confidential records.

Q. Does the law require that a public meeting be audio taped?

A. There is no requirement under the Sunshine law that tape recordings be made by a public board or commission, but if they are made, they become public records.

Q. Can a city restrict a citizen's right to speak at a meeting?

A. Public agencies are allowed to adopt reasonable rules and regulations which ensure the orderly conduct of a public meeting and which require orderly behavior on the part of the public attending. This includes limiting the amount of time an individual can speak and, when a large number of people attend and wish to speak, requesting that a representative of each side of the issue speak rather than everyone present.

Q. As a private citizen, can I videotape a public meeting?

A. A public board may not prohibit a citizen from videotaping a public meeting through the use of non-disruptive video recording devices.

Q. Can a board vote by secret ballot?

A. The Sunshine law requires that meetings of public boards or commissions be "open to the public at all times." Thus, use of pre assigned numbers, codes or secret ballots would violate the law.

Q. Can two members of a public board attend social functions together?

A. Members of a public board are not prohibited under the Sunshine law from meeting together socially, provided that matters which may come before the board are not discussed at such gatherings.

Q. What is a public record?

A. The Florida Supreme Court has determined that public records are all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. They are not limited to traditional written documents. Tapes, photographs, films and sound recordings are also considered public records subject to inspection unless a statutory exemption exists.

Q. Can I request public documents over the telephone and do I have to tell why I want them?

A. Nothing in the public records law requires that a request for public records be in writing or in person, although individuals may wish to make their request in writing to ensure they have an accurate record of what they requested. Unless otherwise exempted, a custodian of public records must honor a request for records, whether it is made in person, over the telephone, or in writing, provided the required fees are paid. In addition, nothing in the law requires the requestor to disclose the reason for the request.

Q. How much can an agency charge for public documents?

A. The law provides that the custodian shall furnish a copy of public records upon payment of the fee prescribed by law. If no fee is prescribed, an agency is normally allowed to charge up to 15 cents per one-sided copy for copies that are 14" x 8 1/2" or less. A charge of up to \$1 per copy may be assessed for a certified copy of a public record. If the nature and volume of the

records to be copied requires extensive use of information technology resources or extensive clerical or supervisory assistance, or both, the agency may charge a reasonable service charge based on the actual cost incurred.

Q. Does an agency have to explain why it denies access to public records?

A. A custodian of a public record who contends that the record or part of a record is exempt from inspection must state the basis for that exemption, including the statutory citation. Additionally, when asked, the custodian must state in writing the reasons for concluding the record is exempt.

Q. When does a document sent to a public agency become a public document?

A. As soon as a document is received by a public agency, it becomes a public record, unless there is a legislatively created exemption which makes it confidential and not subject to disclosure.

Q. Are public employee personnel records considered public records?

A. The rule on personnel records is the same as for other public documents ... unless the Legislature has specifically exempted an agency's personnel records or authorized the agency to adopt rules limiting public access to the records, personnel records are open to public inspection. There are, however, numerous statutory exemptions that apply to personnel records.

Q. Can an agency refuse to allow public records to be inspected or copied if requested to do so by the maker or sender of the documents?

A. No. To allow the maker or sender of documents to dictate the circumstances under which documents are deemed confidential would permit private parties instead of the Legislature to determine which public records are public and which are not.

Q. Are arrest records public documents?

A. Arrest reports prepared by a law enforcement agency after the arrest of a subject are generally considered to be open for public inspection. At the same time, however, certain information such as the identity of a sexual battery victim is exempt.

Q. Is an agency required to give out information from public records or produce public records in a particular form as requested by an individual?

A. The Sunshine Law provides for a right of access to inspect and copy existing public records. It does not mandate that the custodian give out information from the records nor does it mandate that an agency create new records to accommodate a request for information.

Q. What agency can prosecute violators?

A. The local state attorney has the statutory authority to prosecute alleged criminal violations of the open meetings and public records law. Certain civil remedies are also available.

Q. What is the difference between the Sunshine Amendment and the Sunshine Law?

A. The Sunshine Amendment was added to Florida's Constitution in 1976 and provides for full and public disclosure of the financial interests of all public officers, candidates and employees. The Sunshine Law provides for open meetings for governmental boards.

Q. How can I find out more about the open meetings and public records laws?

A. Probably the most comprehensive guide to understanding the requirements and exemptions to Florida's open government laws is the Government-in-the-Sunshine manual compiled by the Attorney General's Office. The manual is updated each year and is available for purchase through the First Amendment Foundation in Tallahassee. For information on obtaining a copy, contact the **First Amendment Foundation at (850) 224-4555.**

CHAPTER 286
PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

286.001 Reports statutorily required; filing, maintenance, retrieval, and provision of copies.

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286.001 Reports statutorily required; filing, maintenance, retrieval, and provision of copies.--

(1) Unless otherwise specifically provided by law, any agency or officer of the executive, legislative, or judicial branches of state government, the State Board of Education, the Board of Governors of the State University System, or the Public Service Commission required or authorized by law to make reports regularly or periodically shall fulfill such requirement by filing an abstract of the report with the statutorily or administratively designated recipients of the report and an abstract and one copy of the report with the Division of Library and Information Services of the Department of State, unless the head of the reporting entity makes a determination that the additional cost of providing the entire report to the statutorily or administratively designated recipients is justified. A one-page summary justifying the determination shall be submitted to the chairs of the governmental operations committees of both houses of the Legislature. The abstract of the contents of such report shall be no more than one-half page in length. The actual report shall be retained by the reporting agency or officer, and copies of the report shall be provided to interested parties and the statutorily or administratively designated recipients of the report upon request.

(2) With respect to reports statutorily required of agencies or officers within the executive, legislative, or judicial branches of state government, the State Board of Education, the Board of Governors of the State University System, or the Public Service Commission, it is the duty of the division, in addition to its duties under s. 257.05, to:

(a) Regularly compile and update bibliographic information on such reports for distribution as provided in paragraph (b). Such bibliographic information may be included in the bibliographies prepared by the division pursuant to s. 257.05(3)(c).

(b) Provide for at least quarterly distribution of bibliographic information on reports to:

1. Agencies and officers within the executive, legislative, and judicial branches of state government, the State Board of Education, the Board of Governors of the State University System, and the Public Service Commission, free of charge; and

2. Other interested parties upon request properly made and upon payment of the actual cost of duplication pursuant to s. 119.07(1).

(3) As soon as practicable, the administrative head of each executive, legislative, or judicial agency and each agency of the State Board of Education, the Board of Governors of the State University System, and the Public Service Commission required by law to make reports periodically shall ensure that those reports are created, stored, managed, updated, retrieved, and disseminated through electronic means.

(4) Nothing in this section shall be construed to waive or modify the requirement in s. 257.05(2) pertaining to the provision of copies of public documents to the division.

History.--ss. 26, 28, 29, ch. 84-254; s. 12, ch. 92-98; s. 104, ch. 92-142; s. 29, ch. 95-196; s. 34, ch. 2007-217.

286.0105 Notices of meetings and hearings must advise that a record is required to appeal.--Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).

History.--s. 1, ch. 80-150; s. 14, ch. 88-216; s. 209, ch. 95-148.

286.011 Public meetings and records; public inspection; criminal and civil penalties.--

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such

fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

History.--s. 1, ch. 67-356; s. 159, ch. 71-136; s. 1, ch. 78-365; s. 6, ch. 85-301; s. 33, ch. 91-224; s. 1, ch. 93-232; s. 210, ch. 95-148; s. 1, ch. 95-353.

286.0111 Legislative review of certain exemptions from requirements for public meetings and recordkeeping by governmental entities.--The provisions of s. 119.15, the Open Government Sunset Review Act, apply to the provisions of law which provide exemptions to s. 286.011, as provided in s. 119.15.

History.--s. 9, ch. 84-298; s. 2, ch. 85-301; s. 3, ch. 95-217; s. 53, ch. 2008-4.

286.0113 General exemptions from public meetings.--

(1) That portion of a meeting that would reveal a security system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(2)(a) A meeting at which a negotiation with a vendor is conducted pursuant to s. 287.057(3) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b)1. A complete recording shall be made of any meeting made exempt in paragraph (a). No portion of the meeting may be held off the record.

2. The recording required under subparagraph 1. is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) or until 20 days after the final competitive sealed replies are all opened, whichever occurs earlier.

3. If the agency rejects all sealed replies, the recording remains exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued invitation to negotiate or until the agency withdraws the reissued invitation to negotiate. A recording is not exempt for longer than 12 months after the initial agency notice rejecting all replies.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

History.--s. 2, ch. 2001-361; s. 44, ch. 2005-251; s. 2, ch. 2006-158; s. 2, ch. 2006-284.

286.0115 Access to local public officials; quasi-judicial proceedings on local government land use matters.--

(1)(a) A county or municipality may adopt an ordinance or resolution removing the presumption of prejudice from ex parte communications with local public officials by establishing a process to disclose ex parte communications with such officials pursuant to this subsection or by adopting an alternative process for such disclosure. However, this subsection does not require a county or municipality to adopt any ordinance or resolution establishing a disclosure process.

(b) As used in this subsection, the term "local public official" means any elected or appointed public official holding a county or municipal office who recommends or takes quasi-judicial action as a member of a board or commission. The term does not include a member of the board or commission of any state agency or authority.

(c) Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the local public official is a member. If adopted by county or municipal ordinance or resolution, adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with local public officials.

1. The substance of any ex parte communication with a local public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.

2. A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official shall not be presumed prejudicial to the action, and such written communication shall be made a part of the record before final action on the matter.

3. Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.

4. Disclosure made pursuant to subparagraphs 1., 2., and 3. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. This subsection does not subject local public officials to part III of chapter 112 for not complying with this paragraph.

(2)(a) Notwithstanding the provisions of subsection (1), a county or municipality may adopt an ordinance or resolution establishing the procedures and provisions of this subsection for quasi-judicial proceedings on local government land use matters. The ordinance or resolution shall provide procedures and provisions identical to this subsection. However, this subsection does not require a county or municipality to adopt such an ordinance or resolution.

(b) In a quasi-judicial proceeding on local government land use matters, a person who appears before the decision-making body who is not a party or party-intervenor shall be allowed to testify before the decision-making body, subject to control by the decision-making body, and may be requested to respond to questions from the decision-making body, but need not be sworn as a witness, is not required to be subject to cross-examination, and is not required to be qualified as an expert witness. The decision-making body shall assign weight and credibility to such testimony as it deems appropriate. A party or party-intervenor in a quasi-judicial proceeding on local government land use matters, upon request by another party or party-intervenor, shall be sworn as a witness, shall be subject to cross-examination by other parties or party-intervenors, and shall be required to be qualified as an expert witness, as appropriate.

(c) In a quasi-judicial proceeding on local government land use matters, a person may not be precluded from communicating directly with a member of the decision-making body by application of ex parte communication prohibitions. Disclosure of such communications by a member of the decision-making body is not required, and such nondisclosure shall not be presumed prejudicial to the decision of the decision-making body. All decisions of the decision-making body in a quasi-judicial proceeding on local government land use matters must be supported by substantial, competent evidence in the record pertinent to the proceeding, irrespective of such communications.

(3) This section does not restrict the authority of any board or commission to establish rules or procedures governing public hearings or contacts with local public officials.

History.--s. 1, ch. 95-352; s. 31, ch. 96-324.

286.012 Voting requirement at meetings of governmental bodies.--No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143.

History.--s. 1, ch. 72-311; s. 9, ch. 75-208; s. 2, ch. 84-357; s. 13, ch. 94-277.

286.021 Department of State to hold title to patents, trademarks, copyrights, etc.--The legal title and every right, interest, claim or demand of any kind in and to any patent, trademark or copyright, or application for the same, now owned or held, or as may hereafter be acquired, owned and held by the state, or any of its boards, commissions or agencies, is hereby granted to and vested in the Department of State for the use and benefit of the state; and no person, firm or corporation shall be entitled to use the same without the written consent of said Department of State.

History.--s. 1, ch. 21959, 1943; ss. 22, 35, ch. 69-106; s. 2, ch. 70-440; s. 15, ch. 79-65.

Note.--Former s. 272.01.

286.031 Authority of Department of State in connection with patents, trademarks, copyrights, etc.--The Department of State is authorized to do and perform any and all things necessary to secure letters patent, copyright and trademark on any invention or otherwise, and to enforce the rights of the state therein; to license, lease, assign, or otherwise give written consent to any person, firm or corporation for the manufacture or use thereof, on a royalty basis, or for such other consideration as said department shall deem proper; to take any and all action necessary, including legal actions, to protect the same against improper or unlawful use or infringement, and to enforce the collection of any sums due the state and said department for the manufacture or use thereof by any other party; to sell any of the same and to execute any and all instruments on behalf of the state necessary to consummate any such sale; and to do any and all other acts necessary and proper for the execution of powers and duties herein conferred upon said department for the benefit of the state.

History.--s. 2, ch. 21959, 1943; ss. 22, 35, ch. 69-106; s. 2, ch. 70-440; s. 16, ch. 79-65.

Note.--Former s. 272.02.

286.035 Constitution Revision Commission; powers of chair; assistance by state and local agencies.--

(1) The chair of the Constitution Revision Commission, appointed pursuant to s. 2, Art. XI of the State Constitution, is authorized to employ personnel and to incur expenses related to the official operation of the commission or its committees, to sign vouchers, and to otherwise expend funds appropriated to the commission for carrying out its official duties.

(2) All state and local agencies are hereby authorized and directed to assist, in any manner necessary, the Constitution Revision Commission established pursuant to s. 2, Art. XI of the State Constitution upon its request or the request of its chair.

History.--s. 1, ch. 77-201; s. 211, ch. 95-148.

286.036 Taxation and Budget Reform Commission; powers.--

(1) The Taxation and Budget Reform Commission appointed pursuant to s. 6, Art. XI of the State Constitution, is authorized to employ personnel and to incur expenses related to the official operation of the commission or its committees, and to expend funds appropriated to the commission for carrying out its official duties. Commission members and staff are entitled to per diem and reimbursement of travel expenses incurred in carrying out their duties, as provided in s. 112.061.

(2) All state and regional agencies and governments are authorized and directed to assist, in any manner necessary, the Taxation and Budget Reform Commission upon its request.

(3) All local governments are authorized to assist the Taxation and Budget Reform Commission in any manner necessary. Municipal and county governments are encouraged to cooperate with the commission, examine their taxation and budgetary policies, and submit recommendations to the commission in the form and manner prescribed by the commission.

(4) Each Taxation and Budget Reform Commission established pursuant to s. 6, Art. XI of the State Constitution and this section may not act or operate later than June 30 of the third year following the year in which the commission is required to be established.

(5) The Taxation and Budget Reform Commission is assigned, for administrative purposes, to the legislative branch. The Office of Legislative Services is directed to expedite, where possible, the business of the commission consistent with prudent financial and management practices.

(6) The Legislative Auditing Committee may at any time, without regard to whether the Legislature is then in session or out of session, take under consideration any matter within the scope of the duties of the Taxation and Budget Reform Commission, and in connection therewith may exercise the powers of subpoena by law vested in a standing committee of the Legislature.

History.--s. 12, ch. 90-203; s. 6, ch. 2007-98.

286.041 Prohibited requirements of bidders on contracts for public works relative to income tax returns.--

(1) The state or any of its departments, agencies, bureaus, commissions, and officers and the counties, consolidated governments, municipalities, school districts, special districts, and other public bodies of this state, and the departments, agencies, bureaus, commissions, and officers thereof, shall not require, directly or indirectly, an audit or inspection of any federal or state income tax returns of any company, corporation, or person as a prior condition before entering into contracts with said company, corporation, or person to construct any public work or to supply any materials, labor, equipment or services, or any combination thereof.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, except that the fine shall not be less than \$100.

History.--s. 1, ch. 72-130.

286.043 Limitation on use of funds for discriminatory contract or bid specifications relating to car rental concessions at airports.—

No public funds shall be used by a unit of local government for the purpose of promulgating contract or bid specifications relating to car rental concessions at airports which would preclude a corporation authorized to do business in this state from submitting bids or entering into such contracts with such unit of local government. Nothing in this section shall prevent the local government from providing in such specifications a minimum annual guarantee of revenue to be paid to such unit of local government.

History.--s. 4, ch. 79-119.

286.23 Real property conveyed to public agency; disclosure of beneficial interests; notice; exemptions.--

(1) Any person or entity holding real property in the form of a partnership, limited partnership, corporation, trust, or any form of representative capacity whatsoever for others, except as otherwise provided in this section, shall, before entering into any contract whereby such real property held in representative capacity is sold, leased, taken by eminent domain, or otherwise conveyed to the state or any local governmental unit, or an agency of either, make a public disclosure in writing, under oath and subject to the penalties prescribed for perjury, which shall state his or her name and address and the name and address of every person having a beneficial interest in the real property, however small or minimal. This written disclosure shall be made to the chief officer, or to his or her officially designated representative, of the state, local governmental unit, or agency of either, with which the transaction is made at least 10 days prior to the time of closing or, in the case of an eminent domain taking, within 48 hours after the time when the required sum is deposited in the registry of the court. Notice of the deposit shall be made to the person or entity by registered or certified mail before the 48-hour period begins.

(2) The state or local governmental unit, or an agency of either, shall send written notice by registered mail to the person required to make disclosures under this section, prior to the time when such disclosures are required to be made, which written request shall also inform the

person required to make such disclosure that such disclosure must be made under oath, subject to the penalties prescribed for perjury.

(3)(a) The beneficial interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to chapter 517, whose interest is for sale to the general public, is hereby exempt from the provisions of this section. When disclosure of persons having beneficial interests in nonpublic entities is required, the entity or person shall not be required by the provisions of this section to disclose persons or entities holding less than 5 percent of the beneficial interest in the disclosing entity.

(b) In the case of an eminent domain taking, any entity or person other than a public officer or public employee, holding real property in the form of a trust which was created more than 3 years prior to the deposit of the required sum in the registry of the court, is hereby exempt from the provisions of this section. However, in order to qualify for the exemption set forth in this section, the trustee of such trust shall be required to certify within 48 hours after such deposit, under penalty of perjury, that no public officer or public employee has any beneficial interest whatsoever in such trust. Disclosure of any changes in the trust instrument or of persons having beneficial interest in the trust shall be made if such changes occurred during the 3 years prior to the deposit of said sum in the registry of the court.

(4) This section shall be liberally construed to accomplish the purpose of requiring the identification of the actual parties benefiting from any transaction with a governmental unit or agency involving the procurement of the ownership or use of property by such governmental unit or agency.

History.--ss. 1, 2, 3, 4, 5, ch. 74-174; s. 1, ch. 77-174; s. 72, ch. 86-186; s. 7, ch. 91-56; s. 212, ch. 95-148.

286.25 Publication or statement of state sponsorship.--Any nongovernmental organization which sponsors a program financed partially by state funds or funds obtained from a state agency shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (name of organization) and the State of Florida." If the sponsorship reference is in written material, the words "State of Florida" shall appear in the same size letters or type as the name of the organization.

History.--s. 1, ch. 77-224.

286.26 Accessibility of public meetings to the physically handicapped.--

(1) Whenever any board or commission of any state agency or authority, or of any agency or authority of any county, municipal corporation, or other political subdivision, which has scheduled a meeting at which official acts are to be taken receives, at least 48 hours prior to the meeting, a written request by a physically handicapped person to attend the meeting, directed to the chairperson or director of such board, commission, agency, or authority, such chairperson or director shall provide a manner by which such person may attend the meeting at its scheduled site or reschedule the meeting to a site which would be accessible to such person.

(2) If an affected handicapped person objects in the written request, nothing contained in the provisions of this section shall be construed or interpreted to permit the use of human physical

assistance to the physically handicapped in lieu of the construction or use of ramps or other mechanical devices in order to comply with the provisions of this section.

History.--s. 1, ch. 77-277; s. 1, ch. 79-170; s. 116, ch. 79-400; s. 1, ch. 81-268.

286.27 Use of state funds for greeting cards prohibited.--No state funds shall be expended for the purchase, preparation, printing, or mailing of any card the sole purpose of which is to convey holiday greetings.

History.--s. 1, ch. 92-21.

286.29 Climate-friendly public business.--The Legislature recognizes the importance of leadership by state government in the area of energy efficiency and in reducing the greenhouse gas emissions of state government operations. The following shall pertain to all state agencies when conducting public business:

(1) The Department of Management Services shall develop the "Florida Climate-Friendly Preferred Products List." In maintaining that list, the department, in consultation with the Department of Environmental Protection, shall continually assess products currently available for purchase under state term contracts to identify specific products and vendors that offer clear energy efficiency or other environmental benefits over competing products. When procuring products from state term contracts, state agencies shall first consult the Florida Climate-Friendly Preferred Products List and procure such products if the price is comparable.

(2) Effective July 1, 2008, state agencies shall contract for meeting and conference space only with hotels or conference facilities that have received the "Green Lodging" designation from the Department of Environmental Protection for best practices in water, energy, and waste efficiency standards, unless the responsible state agency head makes a determination that no other viable alternative exists. The Department of Environmental Protection is authorized to adopt rules to implement the "Green Lodging" program.

(3) Each state agency shall ensure that all maintained vehicles meet minimum maintenance schedules shown to reduce fuel consumption, which include: ensuring appropriate tire pressures and tread depth; replacing fuel filters and emission filters at recommended intervals; using proper motor oils; and performing timely motor maintenance. Each state agency shall measure and report compliance to the Department of Management Services through the Equipment Management Information System database.

(4) When procuring new vehicles, all state agencies, state universities, community colleges, and local governments that purchase vehicles under a state purchasing plan shall first define the intended purpose for the vehicle and determine which of the following use classes for which the vehicle is being procured:

- (a) State business travel, designated operator;
- (b) State business travel, pool operators;
- (c) Construction, agricultural, or maintenance work;
- (d) Conveyance of passengers;
- (e) Conveyance of building or maintenance materials and supplies;
- (f) Off-road vehicle, motorcycle, or all-terrain vehicle;
- (g) Emergency response; or

(h) Other.

Vehicles described in paragraphs (a) through (h), when being processed for purchase or leasing agreements, must be selected for the greatest fuel efficiency available for a given use class when fuel economy data are available. Exceptions may be made for individual vehicles in paragraph (g) when accompanied, during the procurement process, by documentation indicating that the operator or operators will exclusively be emergency first responders or have special documented need for exceptional vehicle performance characteristics. Any request for an exception must be approved by the purchasing agency head and any exceptional performance characteristics denoted as a part of the procurement process prior to purchase.

(5) All state agencies shall use ethanol and biodiesel blended fuels when available. State agencies administering central fueling operations for state-owned vehicles shall procure biofuels for fleet needs to the greatest extent practicable.

History.---s. 23, ch. 2008-227.

EX-PARTE COMMUNICATIONS

MEMORANDUM

103.01-14 7/92

TO: Honorable Maruice A. Ferre Dade County Commissioner	DATE: June 29, 1993
FROM: Joni Armstrong Coffey and Robert L. Krawcheck Assistant County Attorneys	SUBJECT: <u>Jennings v. Dade County</u> (Ex parte Communications)

Due to a substantial number of recent inquiries regarding ex parte communications, our office has prepared this memorandum addressing some of the most frequently asked questions on that subject. We hope that it is of assistance.

EX PARTE COMMUNICATIONS

The Third District Court of Appeal has barred all ex parte communications with Dade County Commissioners (or other quasi-judicial County board members) on matters that will be resolved through quasi-judicial proceedings. Jennings v. Dade County, 589 So.2d 1337 (Fla. 3rd DCA 1991). (Attachment A). So strongly did the Court disapprove of such communications that it termed them "inherently improper" and "anathema to quasi-judicial proceedings." The existence of an ex parte communication creates a presumption that the communication was prejudicial. This in turn entitles a party objecting to the communication to an entirely new hearing unless the presumption is successfully rebutted by the County. Because of this clear prohibition and the potential risk to Dade County's quasi-judicial decisions, the following guidelines are offered.

1. "What is an ex parte communication?"

An ex parte communication is any communication, whether written or oral, between a commissioner (or other quasi-judicial board member) and any person regarding the subject matter of any application that is, or foreseeably will be, heard by the County in a quasi-judicial proceeding. Although the Florida courts have not yet ruled on any exceptions, other case law suggests that a very narrow exception may exist for communications between Commissioners and County staff. However, staff may not under any circumstances act as a conduit for other parties to relay communications from those parties to the quasi-judicial officer.

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2. "What is a quasi-judicial proceeding?"

In general, a quasi-judicial proceeding is one that determines the rights of some individual person or business, rather than a proceeding that determines a countywide rule. Indicia of quasi-judicial proceedings include notice of the proceeding, the right of the party to call witnesses and the right to conduct cross-examination. Examples of quasi-judicial proceedings of Dade County include zoning hearings, whether before the Board of County Commissioners or the Zoning Appeals Board; hearings before the Historical Preservation Board; and hearings before the Construction Trades Qualifying Board. Examples of proceedings that are not quasi-judicial, but rather are legislative in nature, include master plan amendments, contract awards, budget hearings, and enactment of ordinances.

3. "What may a County Commissioner or a member of a County board that conducts quasi-judicial proceedings do to avoid ex-parte communications?"

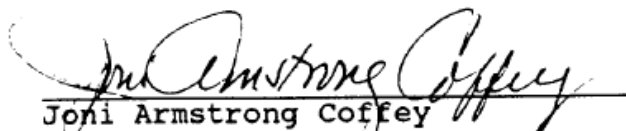
It is especially difficult for elected officials to tell constituents that certain topics are off limits for discussion in certain forums. What may be stressed is that every person has a full opportunity to be heard in the course of the public hearing, which is conducted only after ample public notice. If a written communication is received by a Commissioner, it should be forwarded to the Director of the Building and Zoning Department for inclusion in the official hearing record. The suggested form for an appropriate transmittal memorandum is included herewith as "Attachment B". An appropriate letter of explanation should also be sent to the person making the written communication. A suggested form for such a letter is included herewith as "Attachment C". In the event of an oral communication to a Commissioner, a brief explanation similar to that contained in Attachment C would be appropriate.

If an ex parte communication is received, it is helpful to announce this fact at the public hearing. In the case of a written communication which the Commissioner has not personally read, it is important to state this fact on the record. In the case of an oral communication it is important that he or she state the substance thereof and further state that he or she attempted to curtail the conversation, has kept an open mind, and will make a decision based solely upon the evidence presented at the hearing.

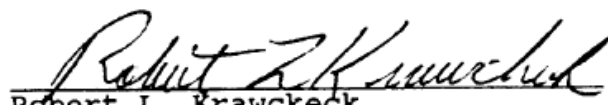
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4. "What is the role of County Commissioners' Aides in this process?"

Commissioners' Aides may also be the object of ex parte communications. What is important in this event is that an Aide not be used as a conduit for providing information outside the public hearing to the Commissioner. Because the Aide acts in many instances as the alter-ego of the Commissioner, the Aide should similarly refrain from conducting such communications. If the substance of the communication is not transmitted by the Aide to the Commissioner, there would be no need to announce the ex parte communication on the public record. If an Aide sees a letter pertaining to an upcoming zoning hearing, the Aide may properly forward the letter directly to the Director of Building and Zoning, to spare the Commissioner from receiving the ex parte communication.


Joni Armstrong Coffey
Assistant County Attorney

and


Robert L. Krawcheck
Assistant County Attorney

JAC/RLK/bc

Attachments

Third District Court of Appeal
EX-PARTE COMMUNICATIONS
JENNINGS VS DADE COUNTY

589 So.2d 1337

Milton S. JENNINGS, Appellant,
v.
DADE COUNTY and Larry Schatzman, Appellees.

Nos. 88-1324, 88-1325.

589 So.2d 1337, 16 Fla. L. Week. D2059, 17 Fla. L. Week. D26

District Court of Appeal of Florida,
Third District.

Aug. 6, 1991. *
On Rehearing Granted Dec. 17, 1991.

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John G. Fletcher, South Miami, for appellant.

Robert D. Korner and Roland C. Robinson, Miami, Robert A. Ginsburg, County Atty., and Eileen Ball Mehta and Craig H. Coller, Asst. County Attys., for appellees.

Joel V. Lumer, Miami, for The Sierra Club as Amicus Curiae.

Before BARKDULL, * NESBITT and FERGUSON, JJ.

ON REHEARING GRANTED

NESBITT, Judge.

The issue we confront is the effect of an ex parte communication upon a decision emanating from a quasi-judicial proceeding of the Dade County Commission. We hold that upon proof that a quasi-judicial officer received an ex parte contact, a presumption arises, pursuant to section 90.304, Florida Statutes (1989), that the contact was prejudicial. The aggrieved party will be entitled to a new and complete hearing before the commission unless the defendant proves that the communication was not, in fact, prejudicial. For the reasons that follow, we quash the order under review with directions.

Respondent Schatzman applied for a variance to permit him to operate a quick oil change business on his property adjacent to that of petitioner Jennings. The Zoning Appeals Board granted Schatzman's request. The county commission upheld the board's decision. Six days

prior to the commission's action, a lobbyist Schatzman employed to assist him in connection with the proceedings registered his identity as required by section 2-11.1(s) of the Dade County Ordinances. Jennings did not attempt to determine the content of any communication between the lobbyist and the commission or otherwise challenge the propriety of any communication prior to or at the hearing.

Following the commission order, Jennings filed an action for declaratory and injunctive relief in circuit court wherein he alleged that Schatzman's lobbyist communicated with some or all of the county commissioners prior to the vote, thus denying Jennings due process both under the United States and Florida constitutions as well as section (A)(8) of the Citizens' Bill of Rights, Dade County Charter. Jennings requested

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the court to conduct a hearing to establish the truth of the allegations of the complaint and upon a favorable determination then to issue an injunction prohibiting use of the property as allowed by the county. Based upon the identical allegations, Jennings also claimed in the second count of his complaint that Schatzman's use of the permitted variance constituted a nuisance which he requested the court to enjoin. The trial court dismissed Count I of the complaint, against both Dade County and Schatzman. The court gave Jennings leave only against Dade County to amend the complaint and to transfer the matter to the appellate division of the circuit court. The trial court denied Schatzman's motion to dismiss Count II and required him to file an answer. Jennings then timely filed this application for common law certiorari.

We have jurisdiction based on the following analysis. The trial court's order dismissed Jennings' equitable claim of non-record ex parte communications while it simultaneously reserved jurisdiction for Jennings to amend his complaint so as to seek common law certiorari review pursuant to *Dade County v. Marca, S.A.*, 326 So.2d 183 (Fla.1976). Under *Marca*, Jennings would be entitled solely to a review of the record as it now exists. However, since the content of ex parte contacts is not part of the existing record, such review would prohibit the ascertainment of the contacts' impact on the commission's determination. This order has the effect then of so radically altering the relief available to Jennings that it is the functional equivalent of requiring him to litigate in a different forum. Thus, Jennings' timely petition activates our common law certiorari jurisdiction because the order sought to be reviewed a) constitutes a departure from the essential requirements of law, and b) requires him to litigate a putative claim in a proceeding that cannot afford him the relief requested and for that reason does not afford him an adequate remedy. [Tantillo v. Miliman](#), 87 So.2d 413 (Fla.1956); [Norris v. Southern Bell Tel. & Tel. Co.](#), 324 So.2d 108 (Fla. 3d DCA 1960). The same reasoning does not apply against Schatzman. Nonetheless, because we have jurisdiction, there is no impediment to our exercising it over Schatzman as a party.

At the outset of our review of the trial court's dismissal, we note that the quality of due process required in a quasi-judicial hearing is not the same as that to which a party to full judicial hearing is entitled. [Goss v. Lopez](#), 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975); [Hadley v. Department of Admin.](#), 411 So.2d 184 (Fla.1982). Quasi-judicial proceedings are not controlled by strict rules of evidence and procedure. See *Astore v. Florida Real Estate Comm'n*, 374 So.2d 40 (Fla. 3d DCA 1979); [Woodham v. Williams](#), 207 So.2d 320 (Fla. 1st DCA 1968). Nonetheless, certain standards of basic fairness must be adhered to in order to afford due process. See *Hadley*, 411 So.2d at 184; [City of Miami v. Jervis](#), 139 So.2d 513 (Fla. 3d DCA

1962). Consequently, a quasi-judicial decision based upon the record is not conclusive if minimal standards of due process are denied. [Morgan v. United States, 298 U.S. 468, 480-81, 56 S.Ct. 906, 911-12, 80 L.Ed. 1288 \(1936\)](#); [Western Gillette, Inc. v. Arizona Corp. Comm'n, 121 Ariz. 541, 592 P.2d 375 \(Ct.App.1979\)](#). A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard. In quasi-judicial zoning proceedings, the parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts. [Coral Reef Nurseries, Inc. v. Babcock Co., 410 So.2d 648, 652 \(Fla. 3d DCA 1982\)](#).¹

The reported decisions considering the due process effect of an ex parte communication upon a quasi-judicial decision are conflicting. Some courts hold that an ex parte communication does not deny due process where the substance of the communication was capable of discovery by the complaining party in time to rebut it on the record. See, e.g., [Richardson v. Perales](#),

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402 U.S. 389, 410, 91 S.Ct. 1420, 1431-32, 28 L.Ed.2d 842 (1971); [United Air Lines, Inc. v. C.A.B., 309 F.2d 238 \(D.C.Cir.1962\)](#); [Jarrott v. Scrivener, 225 F.Supp. 827, 834 \(D.D.C.1964\)](#). Other courts focus upon the nature of the ex parte communication and whether it was material to the point that it prejudiced the complaining party and thus resulted in a denial of procedural due process. E.g., [Waste Management v. Pollution Control Bd., 175 Ill.App.3d 1023, 125 Ill.Dec. 524, 530 N.E.2d 682 \(Ct.App.1988\)](#), appeal denied, 125 Ill.2d 575, 130 Ill.Dec. 490, 537 N.E.2d 819 (1989); [Professional Air Traffic Controllers Org. \(PATCO\) v. Federal Labor Relations Auth., 685 F.2d 547, 564-65 \(D.C.Cir.1982\)](#); [Erdman v. Ingraham, 28 A.D.2d 5, 280 N.Y.S.2d 865, 870 \(Ct.App.1967\)](#).

The county adopts the first position and argues that Jennings was not denied due process because he either knew or should have known of an ex parte communication due to the mandatory registration required of lobbyists. The county further contends that Jennings failed to avail himself of section 33-316 of the Dade County Code to subpoena the lobbyist to testify at the hearing so as to detect and refute the content of any ex parte communication. We disagree with the county's position.

Ex parte communications are inherently improper and are anathema to quasi-judicial proceedings. Quasi-judicial officers should avoid all such contacts where they are identifiable. However, we recognize the reality that commissioners are elected officials in which capacity they may unavoidably be the recipients of unsolicited ex parte communications regarding quasi-judicial matters they are to decide. The occurrence of such a communication in a quasi-judicial proceeding does not mandate automatic reversal. Nevertheless, we hold that the allegation of prejudice resulting from ex parte contacts with the decision makers in a quasi-judicial proceeding states a cause of action. E.g., [Waste Management](#); [PATCO](#). Upon the aggrieved party's proof that an ex parte contact occurred, its effect is presumed to be prejudicial unless the defendant proves the contrary by competent evidence. Sec. 90.304. [Caldwell v. Division of Retirement, 372 So.2d 438 \(Fla.1979\)](#) (for discussion of rebuttable presumption affecting the burden of proof). Because knowledge and evidence of the contact's impact are peculiarly in the hands of the defendant quasi-judicial officer(s), we find such a burden appropriate. [Technicable Video Sys. v. Americable, 479 So.2d 810 \(Fla. 3d DCA 1985\)](#); [Allstate Finance Corp. v. Zimmerman, 330 F.2d 740 \(5th Cir.1964\)](#).

In determining the prejudicial effect of an ex parte communication, the trial court should consider the following criteria which we adopt from PATCO, 685 F.2d at 564-65:

Whether, as a result of improper ex parte communications, the agency's decision making process was irrevocably tainted so as to make the ultimate judgment of the agency unfair, either as to an innocent party or to the public interest that the agency was obliged to protect. In making this determination, a number of considerations may be relevant: the gravity of the ex parte communications; whether the contacts may have influenced the agency's ultimate decision; whether the party making the improper contacts benefited from the agency's ultimate decision; whether the contents of the communications were unknown to opposing parties, who therefore had no opportunity to respond; and whether vacation of the agency's decision and remand for new proceedings would serve a useful purpose. Since the principal concerns of the court are the integrity of the process and the fairness of the result, mechanical rules have little place in a judicial decision whether to vacate avoidable agency proceeding. Instead, any such decision must of necessity be an exercise of equitable discretion.

[E & E Hauling, Inc. v. Pollution Control Bd., 116 Ill.App.3d 586, 71 Ill.Dec. 587, 603, 451 N.E.2d 555, 571 \(Ct.App.1983\)](#), aff'd, 107 Ill.2d 33, 89 Ill.Dec. 821, 481 N.E.2d 664 (1985).

Accordingly, we hold that the allegation of a prejudicial ex parte communication

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in a quasi-judicial proceeding before the Dade County Commission will enable a party to maintain an original equitable cause of action to establish its claim. Once established, the offending party will be required to prove an absence of prejudice.²

In the present case, Jennings' complaint does not allege that any communication which did occur caused him prejudice. Consequently, we direct that upon remand Jennings shall be afforded an opportunity to amend his complaint. Upon such an amendment, Jennings shall be provided an evidentiary hearing to present his prima facie case that ex parte contacts occurred. Upon such proof, prejudice shall be presumed. The burden will then shift to the respondents to rebut the presumption that prejudice occurred to the claimant. Should the respondents produce enough evidence to dispel the presumption, then it will become the duty of the trial judge to determine the claim in light of all the evidence in the case.^{3, 4}

For the foregoing reasons, the application for common law certiorari is granted. The orders of the circuit court are quashed⁵ and remanded with directions.

BARKDULL, J., concurs.

FERGUSON, Judge (concurring).

I concur in the result and write separately to address two arguments of the appellees: (1) This court [Coral Reef Nurseries, Inc. v. Babcock Co., 410 So.2d 648 \(Fla. 3d DCA 1982\)](#), rejected attempts to categorize county commission hearings on district boundary changes as "legislative," while treating hearings on applications for special exceptions or variances as "quasi-judicial"; and (2) the petitioner does not state a cause of action by alleging simply that a lobbyist discussed the case in a private meeting with members of the County Commission prior

to the hearing. It is clear from Judge Nesbitt's opinion for the court that neither argument is accepted.

Legislative and Quasi-Judicial Functions Distinct

In support of its argument, that "[t]his Court has previously rejected attempts to categorize county commission hearings on district boundary changes as 'legislative', while treating hearings on applications for special exceptions or variances as 'quasi-judicial'," Dade County cites [Coral Reef Nurseries, Inc. v. Babcock Company, 410 So.2d 648 \(Fla. 3d DCA 1982\)](#). The argument is made for the purpose of bringing this case within what the respondents describe as a legislative-function exception to the rule against ex parte communications. Indeed, there is language in the Coral Reef opinion, particularly the dicta that "it is the character of the administrative hearing leading to the action of the administrative body that determines the label" as legislative or quasi-judicial, Coral Reef at 652, which, when read out of context, lends support to Dade County's contentions. As an abstract proposition, the statement is inaccurate.

Whereas the character of an administrative hearing will determine whether the proceeding is quasi-judicial or executive, [De Groot v. Sheffield, 95 So.2d 912, 915 \(Fla.1957\)](#), it is the nature of the act performed that determines its character as legislative or otherwise. [Suburban Medical Center v. Olathe Community Hosp., 226 Kan. 320, 328, 597 P.2d 654, 661 \(1979\)](#). See also [Walgreen Co. v. Polk County, 524 So.2d](#)

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1119, 1120 (Fla. 2d DCA 1988) ("The quasi-judicial nature of a proceeding is not altered by mere procedural flaws.").

A judicial inquiry investigates, declares and enforces liabilities as they stand on present facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power.

[Suburban Medical Center, 597 P.2d at 661](#) (quoting [Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226, 29 S.Ct. 67, 69, 53 L.Ed. 150 \(1908\)](#)).¹

It is settled that the enactment and amending of zoning ordinances is a legislative function-by case law, [Schauer v. City of Miami Beach, 112 So.2d 838 \(Fla.1959\)](#); [Machado v. Musgrove, 519 So.2d 629 \(Fla. 3d DCA 1987\)](#) (en banc), rev. denied, 529 So.2d 694 (Fla.1988), by statute, sections 163.3161 and 166.041, Florida Statutes (1989), and by ordinance, Dade County Code Sec. 35-303. See also Anderson, Law of Zoning, Sec. 1.13 (2d Ed.1976) (zoning is a legislative act representing a legislative judgment as to how land within the city should be utilized and where the lines of demarcation between the several zones should be drawn); 101 C.J.S. Zoning and Land Planning Sec. 1 (1958) (same). It is also fairly settled in this state that the granting of variances,² and special exceptions or permits, are quasi-judicial actions.³ [Walgreen Co. v. Polk County, 524 So.2d 1119, 1120 \(Fla. 2d DCA 1988\)](#); [City of New Smyrna Beach v. Barton, 414 So.2d 542](#) (Fla. 5th DCA) (Coward, J., concurring specially), rev. denied, 424 So.2d 760 (Fla.1982); [City of Apopka v. Orange County, 299 So.2d 657 \(Fla. 4th DCA 1974\)](#); [Sun Ray Homes, Inc. v. County of Dade, 166 So.2d 827 \(Fla. 3d DCA 1964\)](#).

A variance contemplates a nonconforming use in order to alleviate an undue burden on the individual property owner caused by the existing zoning. Rezoning contemplates a change in existing zoning rules and regulations within a district, subdivision or other comparatively large area in a given governmental unit. [Troup v. Bird, 53 So.2d 717 \(Fla.1951\)](#); [Mayflower Property, Inc. v. City of Fort Lauderdale, 137 So.2d 849 \(Fla. 2d DCA 1962\)](#); 101A C.J.S. Zoning and Land Planning Sec. 231 (1979).

Coral Reef Case Clarified

Coral Reef involved a legislative action. The issue before the court was whether

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there was a showing of substantial and material changes in a 1979 application for a rezoning so that a 1978 denial of an application for the same changes, on the same parcel, by the same applicant, would not be precluded by res judicata principles. It was not necessary to hold the 1978 hearing quasi-judicial in character in order to find that the 1978 resolution had preclusive effect on the 1979 zoning hearing. There is a requirement for procedural fairness in all land use hearings, whether on an application for a boundary change or a variance. Adherence to that constitutional standard, however, does not alter the distinct legal differences between quasi-judicial and legislative proceedings in land use cases.

We clarify Coral Reef, in accordance with its facts, as holding only that legislation denying an application for rezoning has a preclusive effect on a subsequent application for the same rezoning, unless the applicant can show substantial and material changes in circumstances. [Treister v. City of Miami, 575 So.2d 218 \(Fla. 3d DCA 1991\)](#), relying on Coral Reef. An interpretation of Coral Reef as holding that there is no longer a distinction between legislative actions and quasi-judicial actions of a county commission in land use cases goes far beyond the actual holding of the case, and is clearly erroneous. See note 1 supra.

Reliance by the respondents on [Izaak Walton League of America v. Monroe County, 448 So.2d 1170 \(Fla. 3d DCA 1984\)](#), is similarly misplaced. In that case we held that county commissioners, when acting in their legislative capacities, have the right to publicly state their views on pending legislative matters. Izaak Walton League does not address the issue of ex parte communications or prehearing pronouncements in quasi-judicial proceedings.

Lobbying

Jennings argues here that the behind-the-scenes lobbying ⁴ of the commissioners by Schatzman, for the purpose of influencing the outcome of an appeal from a quasi-judicial proceeding, violated the Citizens' Bill of Rights ⁵ of the Dade County Charter, as well as the due process provisions of the United States and Florida Constitutions. We agree, obviously, that the lobbying actions were unlawful. Dade County and Schatzman respond that Jennings is entitled to no relief because he has not alleged and demonstrated a resulting prejudice. In the opinion on rehearing this court now clearly rejects that argument.

Prejudice is to be presumed, without further proof, from the mere fact that any county commissioner granted a private audience to a lobbyist, whose purpose was to solicit the commissioner to vote a certain way in an administrative proceeding for reasons not necessarily

addressed solely to the merits of the petition, and that the commissioner did vote accordingly. Starting with the legal definition of lobbying,

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see note 4 supra, and applying common knowledge as to how the practice works, there is a compelling reason for placing the burden of proving no prejudice on the party responsible for the ex parte communication.

Although an ex parte communication with a quasi-judicial tribunal makes its final action avoidable, rather than void per se, the presumption which is drawn from the fact of the improper conduct, is applied to promote a strong social policy and is sufficient evidence to convince the fact-finder that the innocent party has been prejudiced; the rebuttable presumption imposes upon the party against whom it operates the burden of proof concerning the nonexistence of the presumed fact.⁶ Sec. 90.304, Fla.Stat. (1991); [Department of Agriculture & Consumer Servs. v. Bonanno, 568 So.2d 24, 31-32 \(Fla.1990\)](#); Black's Law Dictionary 1349 (4th ed. 1968).

Ex parte lobbying of an administrative body acting quasi-judicially denies the parties a fair, open, and impartial hearing. [Suburban Medical Center v. Olathe Community Hosp., 226 Kan. 320, 597 P.2d 654 \(1979\)](#). Adherence to procedures which insure fairness "is essential not only to the legal validity of the administrative regulation, but also to the maintenance of public confidence in the value and soundness of this important governmental process." Id. 597 P.2d at 662 (citing 2 Am.Jur.2d Administrative Law Sec. 351). The constitutional compulsions which led to the establishment of rules regarding the disqualification of judges apply with equal force to every tribunal exercising judicial or quasi-judicial functions. 1 Am.Jur.2d Administrative Law Sec. 64, at 860 (1962); City of Tallahassee v. Florida Pub. Serv. Comm'n, 441 So.2d 620 (Fla.1983) (standard used in disqualifying agency head is same standard used in disqualifying judge). [Rogers v. Friedman, 438 F.Supp. 428 \(E.D.Tex.1977\)](#) (rule as to disqualification of judges is same for administrative agencies as it is for courts) (citing K. Davis, Administrative Law Sec. 12.04, at 250 (1972)). Ritter v. Board of Comm'rs of Adams County, 96 Wash.2d 503, 637 P.2d 940 (1981) (same).

* Judge Barkdull participated in decision only.

* Judge Barkdull participated in decision only.

1 It was conceded at oral argument that the hearing before the commission in this case was quasi-judicial.

2 In such a proceeding, the principles and maxims of equity are applicable. See 22 Fla.Jur.2d Equity Secs. 44, et seq. (1980).

3 In rebutting the presumption of prejudice, respondent may rely on any favorable evidence presented during the claimant's case-in-chief, including that adduced during respondent's cross-examination of claimant's witnesses.

4 Under the PATCO test adopted, one of the primary concerns is whether the ex parte communication had sufficient impact upon the decision and, therefore, whether the vacation of the agency's decision and remand for a new proceeding would be likely to change the result.

5 Nothing in this decision shall affect our holding [Izaak Walton League of America v. Monroe County, 448 So.2d 1170 \(Fla. 3d DCA 1984\)](#) (county commission acting in a legislative capacity).

1 Relying on Coral Reef, the majority opinion refers to "quasi-judicial zoning proceedings," a confounding phrase which has its genesis [Rinker Materials Corp. v. Dade County, 528 So.2d 904, 906](#), n. 2 (Fla. 3d DCA 1987). There Dade County argued to this court that the according of "procedural due process" converts a legislative proceeding into a quasi-judicial proceeding, citing Coral Reef. That proposition runs afoul of an entire body of administrative law. If an act is in essence legislative in character, the fact of a notice and a hearing does not transform it into a judicial act. If it would be a legislative act without notice and a hearing, it is still a legislative act with notice and a hearing. [Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 29 S.Ct. 67, 53 L.Ed. 150 \(1908\)](#); [Reagan v. Farmers' Loan & Trust Co., 154 U.S. 362, 14 S.Ct. 1047, 38 L.Ed. 1014 \(1894\)](#).

2 A variance is a modification of the zoning ordinance which may be granted when such variance will not be contrary to the public interest and when, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. 7 FlaJur2d, Building, Zoning, and Land Controls, Sec. 140 (1978).

The normal function of a variance is to permit a change in "building restrictions or height and density limitations" but not a change in "use classifications". [George v. Miami Shores Village, 154 So.2d 729 \(Fla. 3d DCA 1963\)](#).

3 An administrative body acts quasi-judicially when it adjudicates private rights of a particular person after a hearing which comports with due process requirements, and makes findings of facts and conclusions of law on the disputed issues. Reviewing courts scrutinize quasi-judicial acts by non-deferential judicial standards. [City of Apopka v. Orange County, 299 So.2d 657 \(Fla. 4th DCA 1974\)](#).

On review of legislative acts, the court makes a deferential inquiry, i.e., is the exercise of discretionary authority "fairly debatable." Southwest Ranches Homeowners [Ass'n v. Broward County, 502 So.2d 931](#) (Fla. 4th DCA), rev. denied, 511 So.2d 999 (Fla.1987). Further, there is no requirement that a governmental body, acting in its legislative capacity, support its actions with findings of fact and conclusions of law.

4 " 'Lobbying' is defined as any personal solicitation of a member of a legislative body during a session thereof, by private interview, or letter or message, or other means and appliances not [necessarily] addressed solely to the judgment, to favor or oppose, or to vote for or against, any bill, resolution, report, or claim pending, or to be introduced ..., by any person ... who is employed for a consideration by a person or corporation interested in the passage or defeat of such bill, resolution, or report, or claim, for the purpose of procuring the passage or defeat thereof." Black's Law Dictionary 1086 (rev. 4th ed. 1968). (Emphasis supplied). The work of lobbying is performed by lobbyists.

A lobbyist is one who makes it a business to "see" members of a legislative body and procure, by persuasion, importunity, or the use of inducements, the passing of bills, public as well as private, which involve gain to the promoters. Id.

5 Section a(8), Citizens' Bill of Rights, Dade County Charter, provides in pertinent part:

At any zoning or other hearing in which review is exclusively by certiorari, a party or his counsel shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and

to conduct such cross-examination as may be required for a full and true disclosure of the facts. The decision of any such agency, board, department or authority must be based upon the facts in the record.

6 [PATCO v. Federal Labor Relations Authority, 685 F.2d 547 \(D.C.Cir.1982\)](#), relied on by Judge Nesbitt, supports this view. There the court was construing section 557(d)(1) of the Administrative Procedure Act, governing ex parte communications. The Act provides, in subsection (C), that a member of the body involved in the decisional process who receives any prohibited communication shall place the contents of the communication on public record. Subsection (D) states that where the communication was knowingly made by a party in violation of this subsection, the party may be required "to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation." 5 U.S.C.A. Sec. 557(d)(1)(C), (D).